U.S. and Illinois
Supreme Court Update
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Illinois Supreme Court:

The Fourth Amendment

Birchfield v. North Dakota, ___ U.S. ___, 136 S. Ct. 2160, 195 L. Ed. 2d 560 (2016) (No. 14-1468, 6/23/16)
In deciding whether a warrant is needed under the search incident to arrest doctrine, the Court generally weighs the degree of intrusion into a person's privacy against the State's legitimate interest in conducting the search. Using this balancing test, the Court concluded that when a person is arrested for drunk driving, a warrant is required for a blood alcohol test but not for a breath test.

The Court first found that breath tests do not implicate significant privacy concerns. First, the physical intrusion is almost negligible, "no more demanding than blowing up a party balloon." And people have no possessory interest in or emotional attachment to the air in their lungs. All the air used in a breath test would sooner or later be exhaled even without the test. Second, breath tests only reveal one bit of information, the amount of alcohol in the subject's breath. No sample of anything is left with the police. Finally, a breath test is not likely to cause any embarrassment beyond that inherent in an arrest. The act of blowing into a machine is not inherently embarrassing and the tests are normally conducted in private settings.

The Court found blood tests to be a different matter. They entail piercing the skin to extract a part of the subject's body, an act significantly more intrusive than blowing in a tube. Humans continuously exhale air but do not regularly shed blood. And a blood test provides authorities with a sample that can be preserved and used to extract information beyond a simple blood alcohol reading.

Finally, the Court held that the State has a paramount interest in preserving the safety of its highways. Alcohol consumption is a leading cause of traffic fatalities, and the Court's cases have long recognized the "carnage" caused by drunk drivers. The State thus has a compelling interest in deterring drunk driving. Balancing these interests, the Court concluded that the Fourth Amendment permits warrantless breath tests incident to arrests for drunk driving, but does not permit warrantless blood tests.

Utah v. Strieff, ___ U. S. ___, 136 S. Ct. 2056, 195 L. Ed. 2d 400 (2016) (14-1373, 6/20/16)
1. The Fourth Amendment exclusionary rule requires that courts exclude both primary evidence obtained as a direct result of an illegal search and any evidence

subsequently discovered as a result of the illegal search. However, due to the significant cost of the exclusionary rule, the U.S. Supreme Court has limited its applicability to instances where the deterrent effect outweighs the substantial social cost. Thus, several exceptions to the exclusionary rule are recognized, including the attenuation doctrine. This doctrine holds that evidence obtained as a result of a Fourth Amendment violation is admissible where the connection between the unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance such that the interests protected by the Fourth Amendment would not be served by suppressing the evidence.

2. The court concluded that the attenuation doctrine examines the "causal link" between the government's unlawful act and the discovery of the evidence, and does not require an independent, voluntary act of the defendant (such as a confession leading to the discovery of evidence or consent to a search). Thus, the Utah Supreme Court erred by finding that the attenuation doctrine applies only where the intervening event between an unlawful arrest and the recovery of evidence consists of a voluntary act by the arrestee.

3. Whether the discovery of evidence is sufficiently attenuated from the constitutional violation is determined by the three factors articulated in *Brown v. Illinois*, 422 U. S. 590 (1975): (1) the "temporal proximity" between the unconstitutional conduct and the discovery of evidence, (2) the presence of any intervening circumstances, and (3) the purpose and flagrancy of the official misconduct. Of these factors, the third is the most important.

4. Here, the discovery of evidence on defendant's person was sufficiently attenuated from the unconstitutional stop to preclude application of the exclusionary rule. During intermittent surveillance over one week, an officer who was investigating a tip concerning narcotics activity observed that several visitors left a particular residence within a few minutes after arriving. The officer observed defendant leave the house and go toward a nearby convenience store. Although he did not suspect any wrongdoing by defendant, the officer detained defendant, identified himself, and asked what defendant was doing at the residence. As part of the stop, the officer requested defendant's identification. The officer relayed the information to a police dispatcher, who reported that defendant had an outstanding arrest warrant for a traffic violation. The officer arrested defendant pursuant to the warrant, and performed a search incident to arrest which disclosed a bag of methamphetamine and drug paraphernalia. Throughout the proceedings, the prosecution conceded that the officer lacked reasonable suspicion for the stop. The prosecution argued, however, that the existence of a valid arrest warrant attenuated the connection between the unlawful stop and the discovery of the contraband. The Supreme Court agreed.

The court concluded that the only the first *Brown* factor favored suppression, because substantial time did not elapse between the illegal detention and the discovery of the contraband. The court concluded that the second factor favored the State, however, because the arrest warrant was valid, predated the unconstitutional stop, was unconnected to the stop, and required the officer to make an arrest. The court concluded that the third factor - the purpose and flagrancy of the officer's misconduct - also favored the State. The purpose of the exclusionary rule is to deter police misconduct. The court found that the officer here was "at most negligent," because he made "two good-faith mistakes" by stopping defendant "without a sufficient basis to suspect" that he was a short-term visitor who was consummating a drug transaction and by detaining defendant instead of merely asking to speak to him. "[T]hese errors in judgment hardly rise to a purposeful or flagrant violation of [defendant's] Fourth Amendment rights." The court also stressed that there was no indication the stop was made as part of a systematic pattern of misconduct, the officer's conduct was lawful after the decision to make an improper stop, the warrant check was a precaution to assure officer safety, and the contraband was discovered as part of a lawful search incident to arrest. Under these circumstances, the outstanding warrant was a critical intervening circumstance which was independent of the illegal stop and which broke the causal connection between the illegal stop and the discovery of the evidence.

In the course of its holding, the court rejected the argument that conducting a suspicionless stop constitutes flagrant misconduct. The court found that police action can be "flagrant" only if it is "more severe" than merely making an unjustified stop.

5. Because the State did not attempt to justify the stop, the court assumed for purposes of the opinion that the officer lacked any reasonable suspicion to make the initial stop. The court also stated that in light of its conclusion that the attenuation doctrine applied, it need not decide whether the existence of an outstanding warrant made the initial stop constitutional "even if the [the officer] was unaware of [the warrant's] existence."

6. In dissent, Justices Sotomayor and Ginsberg noted that in many areas a substantial part of the population has outstanding arrest warrants. Thus, the possible existence of an arrest warrant is not the sort of "intervening surprise" that an officer cannot anticipate when making a stop. The dissenting opinion also described the majority opinion as setting forth the "remarkable proposition" that the mere existence of a warrant not only gives an officer legal cause to arrest and search a person, but also "forgives an officer who, with no knowledge of the warrant at all, unlawfully stops that person on a whim or hunch."

7. In a separate dissent, Justice Kagan stated that "given the staggering number of such warrants on the books," the majority opinion provides police with an incentive to make illegal stops because if the detainee turns out to have an outstanding warrant, anything found in a search may be used in a criminal prosecution.

People v. Franklin, 2016 IL App (1st) 140049 (No. 1-14-0059, 8/24/16)
1. A warrantless search is unconstitutional unless it falls within one of the three exceptions to the warrant requirement that are recognized in Illinois: (1) search incident to arrest; (2) probable cause accompanied by exigent circumstances; and (3) consensual searches.

2. Investigating a theft, the police went to a motel room looking for the offender, DB. When they arrived, defendant was just leaving the room. Defendant told the police the room was rented in his name and DB was inside. When defendant let the police into the room, the officers saw DB sleeping in a bed and a bag of marijuana on the night-stand between the two beds. The officers recovered the marijuana and did a quick search of the room. An officer checked the ceiling tiles since that is a frequent place to stash contraband, but none of them had been disturbed.

When the officers radioed for a drug-sniffing dog, DB ran out of the room. The officers ran after him, leaving defendant alone. When the officers returned, they saw that the ceiling tiles in the bathroom had been moved. The officers handcuffed defendant, sat him on the bed, and then searched the area behind the tiles, where they found two guns.

3. The court held that the search of the area behind the tiles was illegal. First, the search was not a permissible search incident to arrest. A search incident to arrest only extends to the person arrested and the area within his reach. Here, the bathroom area was separate from the room where defendant had been arrested and handcuffed and thus was not within his immediate reach. The police may have had probable cause to search that area, but probable cause standing alone is insufficient to justify the warrantless search.

There were also no exigent circumstances justifying the search. Exigent circumstances exist where there is compelling need for prompt action and there is no time to obtain a warrant. Here, by the time the police searched the area behind the tiles, defendant was already in custody and handcuffed so there were no exigent circumstances.

Since the weapons recovered during the illegal search were the only evidence supporting defendant's unlawful use of weapons by a felon conviction, the court reversed outright defendant's conviction.

Counsel

People v. Cherry, 2016 IL 118728 (No. 118728, 9/22/16)
In *United States v. Cronic*, 466 U.S. 648 (1984), the Supreme Court held that the usual prejudice prong of *Strickland* does not apply and prejudice may be presumed where (1) defendant is denied counsel at a critical stage; (2) counsel entirely fails to subject the State's case to meaningful adversarial testing; and (3) counsel represents a client in situations where no lawyer could provide effective representation. The second exception only applies where counsel's effectiveness falls to such a low level that it is not merely incompetence, but no representation at all.

Defendant argued that the representation of his counsel at a *Krankel* hearing was so deficient that prejudice should be presumed under the second Cronic exception. The court rejected defendant's argument. At the *Krankel* hearing, counsel orally argued defendant's *pro se* claims concerning his trial counsel's ineffectiveness. Although it was possible counsel could have done more, such as introducing evidence in support of defendant's claims, the failure to do so does not rise to the level of no representation at all. Counsel's failure, if any, would have been nothing more than poor representation under *Strickland*. And since defendant made no showing of prejudice, he could not prevail under the second prong of *Strickland*.

People v. Cotto, 2016 IL 119006 (No. 119006, 5/19/16)
1. There is no constitutional right to the assistance of counsel during post-conviction proceedings. Instead, the assistance of counsel in such proceedings is a matter of legislative grace. In enacting the Post-Conviction Hearing Act, the legislature provided that postconviction petitioners are to receive reasonable assistance by counsel.

Resolving a conflict in Appellate Court precedent, the Supreme Court accepted the State's concession that the reasonable assistance standard applies whether counsel is appointed or retained. "Both retained and appointed counsel must provide reasonable assistance to their clients after a petition is advanced from first-stage proceedings."

2. Here, privately retained post-conviction counsel provided a reasonable level of assistance. Counsel drafted a petition with several claims alleging due process violations and ineffective assistance by trial counsel and appellate counsel. The petition contained several supporting attachments including affidavits and more than 100 pages of transcripts. The petition survived first-stage dismissal but was dismissed at second-stage proceedings.

The only error which defendant alleged on appeal was that retained post-conviction counsel failed to adequately show that the untimely filing of the petition was not due to defendant's culpable negligence. Defendant claimed that he was not responsible for the delay because appellate counsel failed to inform him that the Appellate Court had decided his appeal.

The Supreme Court noted that defendant failed to specify what information was available other than that which was introduced by the post-conviction attorney, and did not disclose when he retained post-conviction counsel. Most importantly, the petition was dismissed not because it was untimely, but on its merits. Under these circumstances, counsel's representation was reasonable.

Guilty Pleas

People v. Valdez, 2016 IL 119860 (No. 119860, 9/22/16)
Under *Padilla v. Kentucky*, 559 U.S. 356 (2010), defense counsel has a duty to correctly advise a defendant about the immigration consequences of a guilty plea before defendant enters the plea. In *Padilla*, even a cursory check of the relevant statute would have disclosed that the conviction would make the defendant mandatorily deportable. However, defense counsel told the defendant that he need not worry about the effect of the plea on his immigration status.

The *Padilla* court stated that where the law is not straightforward, defense counsel need only advise a non-citizen defendant that a guilty plea may carry a risk of adverse immigration consequences.

2. Here, defense counsel failed to inform a guilty plea defendant that the plea might carry any consequences on his immigration status. The court stated that the effect of the conviction on defendant's immigration status was unclear, because depending on the circumstances a burglary conviction may or may not make deportation presumptively mandatory. Under these circumstances defense counsel was required only to advise defendant that his guilty plea might have immigration consequences.

3. Thus, defense counsel's failure to provide any advice about defendant's immigration status was objectively unreasonable and satisfied the first component of *Strickland*. However, the court concluded that the defendant could not show prejudice where the trial court complied with 725 ILCS 5/113-8 by admonishing defendant that the conviction "may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization." Because defense counsel was merely required to advise defendant of a possibility of immigration consequences, the trial court's admonishments to the same effect cured any prejudice resulting from defense counsel's omission.

People v. Williams, 2016 IL App (4th) 140502 (No. 4-14-0502, 5/11/16)
1. The court recommended that in order to eliminate the likelihood of post-conviction proceedings raising issues that are outside the record, trial courts "should go through a 'preflight checklist'" concerning the defendant's decision to reject a plea offer and go to trial. As part of such a "checklist," the court believed that the trial judge should:

> a. Ensure that the prosecutor, defense attorney, and defendant all understand the applicable minimum and maximum sentences, including any

sentencing enhancements, mandatory or discretionary consecutive sentencing options, and truth-in-sentencing considerations.

b. Inquire of the prosecution whether it entered negotiations with defense counsel, whether a guilty-plea offer was made, and the exact nature of the offer (including expiration dates, if any).

c. Confirm the plea offer with defense counsel and determine whether counsel conveyed that offer to the defendant.

d. Confirm personally with the defendant his understanding of the State's guilty-plea offer as conveyed by his counsel.

e. Ensure that the defendant understands that he or she has the right to decide whether to accept or reject the State's offer, after consultation with counsel.

f. Confirm the defendant's decision to reject the State's guilty plea offer.

g. Confirm that given his understanding of the minimum and maximum possible sentences, the defendant wishes to persist with his decision regarding the guilty-plea offer.

h. Admonish the defendant that although he or she should consider counsel's advice, it is up to the defendant whether to enter a guilty or not guilty plea and whether to have a jury or bench trial.

2. Where a post-conviction petitioner claims that trial counsel was ineffective in guilty plea negotiations, the Strickland standard applies. Thus, the petitioner must show that counsel's performance was deficient and that prejudice resulted. In the context of guilty plea negotiations, prejudice is shown where: (1) there is a reasonable probability that defendant would have accepted the plea offer absent counsel's deficient performance, and (2) the guilty plea offer would not have been withdrawn by the State or refused by the trial court.

Defendant's post-conviction petition alleged that he would have accepted the State's guilty-plea offer of an 18-year-sentence had defense counsel informed him that if he was convicted he could receive consecutive sentences and would be required to serve 85% of the sentence for first degree murder. The court concluded that the petition alleged a substantial constitutional violation and that the trial court therefore erred by entering a dismissal order at second-stage proceedings. The cause was remanded for third stage proceedings.

Trial

Foster v. Chatman, 578 U. S. ___, 136 S. Ct. 1737, 195 L.E.2d 1 (No. 14-8349, 5/23/16)
The constitution forbids striking even one prospective juror for racially discriminatory purposes. *Batson*, 476 U.S. 79 (1986), provides a three-step process for determining when a peremptory strike has been used improperly. First, a defendant must make a prima facie case of discrimination. If that case has been made, the prosecution must offer a race-neutral basis for the strike. Finally, the court must determine whether the defendant has shown purposeful discrimination. Here, only the third step was at issue.

The court held that defendant established that the prosecution used two of its peremptory challenges in a racially discriminatory manner. Although the prosecution provided numerous facially race-neutral explanations for its two challenges, the record demonstrated that the explanations were false and pretextual.

Betterman v. Montana, ___ U. S. ___, 136 S. Ct. 1609, 194 L. Ed. 2d 723 (No. 14-1457, 5/19/16)
The Sixth Amendment provides that in criminal prosecutions, the accused has the right to a speedy and public trial. The court concluded that the Sixth Amendment right to a speedy trial applies only after the defendant has been charged and before a conviction is entered. When the State is investigating to determine whether to file a criminal charge, the primary protection against delay is the statute of limitations. After conviction and before sentencing, the due process clause protects against undue delay.

In the course of its opinion, the court noted that the presumption of innocence no longer applies once a person has been convicted. In addition, the sole remedy for a speedy trial violation is dismissal of the charges, a sanction which makes no sense in the context of a defendant who has been convicted but not yet sentenced.
The court also noted that some pre-sentencing delay is necessary for preparation of the pre-sentence report, and that unreasonable delay between conviction and sentencing is prohibited by the rules of various jurisdictions as well as by the due process clause.

People v. Hood, 2016 IL 118581 (No. 118581, 9/22/16)
1. A criminal defendant has a constitutional right to physically face persons who testify against him and to conduct cross-examination. Under *Crawford v. Washington*, 541 U.S. 36 (2004), where the State seeks to admit "testimonial" hearsay, it must establish both that the declarant is unavailable to testify at trial and that defendant had a prior opportunity for cross-examination. Under Crawford, depositions are testimonial hearsay.

2. Here, the State sought to admit the deposition of the complainant. The court found that the State demonstrated that the complainant was unavailable to testify at trial and that defendant had a prior opportunity for cross-examination. The complainant's attending physician testified that at the time of trial, the complainant was living in a nursing home and was unable to care for himself. In addition, the testimony established that the complainant was suffering from severe dementia, had no awareness of his environment, and was unable to communicate in any meaningful way.

Furthermore, defendant had the opportunity for cross-examination although he was not present at the deposition. The court noted that defendant was not barred or prevented from attending the deposition; in fact, the trial court's order for the deposition directed the Cook County Sheriff to transport defendant to the deposition "over the objection of the defendant." This paragraph was then crossed out by hand.

At trial, defense counsel confirmed that he had waived defendant's presence at the deposition. Under these circumstances, defendant was fully aware that the deposition had been ordered and that he had the right to attend. In addition, two assistant public defenders appeared on defendant's behalf at the deposition and conducted cross-examined.

Because both the unavailability of the complainant and a prior opportunity for cross-examination were shown, admission of the deposition did not violate *Crawford*.

3. Similarly, admission of the deposition did not violate defendant's due process right to be present. The due process right to be present is a "lesser right" that is violated only if the defendant's absence results in an unfair proceeding or the loss of an underlying substantial right. The court found that because defendant's confrontation rights were not violated, there could be no violation of the secondary due process right to be present.

4. Supreme Court Rule 414(e) provides that defendant and defense counsel have the right to confront and cross-examine any witness whose deposition is taken, but that defendant and defense counsel "may waive such right in writing." The court rejected

the argument that the trial court violated Rule 414(e) by admitting a deposition that had been obtained without defendant's written waiver. The court found that the written waiver requirement was not constitutionally mandated, but was merely a procedural rule to ensure the defendant was given notice of the deposition and an opportunity to appear. Where it was clear that defendant knew of the deposition and that he could attend if he wanted, the absence of a written waiver did not cause prejudice.

Defendant's conviction was affirmed.

Judge

Williams v. Pennsylvania, ___ U. S. ___, 136 S. Ct. 1899, 195 L. Ed. 2d 132 (2016) (No. 15-5040,6/9/16)

1. Due process guarantees that the judge is not actually biased, and requires recusal when the likelihood of bias is "too high to be constitutionally tolerable." Whether due process is violated where a judge refuses to recuse himself depends on whether an average judge in the same position would be likely to remain neutral.

The court concluded that there is an unacceptable risk of actual bias where a judge had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case, because of the potential for bias where a single person serves as both accuser and adjudicator in the same case.

2. Where during trial the district attorney personally approved his assistant's request to seek a death sentence against the defendant, due process was violated thirty years later when, as Chief Justice of the Pennsylvania Supreme Court, the former district attorney participated in the court's decision to reinstate the death sentence and vacate a lower court's decision granting post-conviction relief based on a *Brady* violation. Before participating in the decision, the former district attorney denied defendant's request that he recuse himself.

The Supreme Court stated: "When a judge has served as an advocate for the State in the very case the court is now asked to adjudicate, a serious question arises as to whether the judge, even with the most diligent effort, could set aside any personal interest in the outcome." The court added that the personal knowledge which the judge acquired as an advocate for the prosecution "may carry far more weight with the judge than the parties' arguments to the court."

The court found that the decision to seek a death sentence amounted to significant, personal involvement in a critical trial decision, because without the prosecutor's express authorization the State would not have been able to pursue a death sentence. The court also noted that the relief ordered by the lower court was based on repeated, intentional Brady violations. Even if the former district attorney had not been aware of the violations at the time of defendant's trial, it would be difficult for a judge in his position not to view the [post-conviction] court's findings as a criticism of his former office and, to some extent, of his own leadership and supervision as district attorney."

3. The court also stressed that the due process clause marks only the "outer boundaries of judicial disqualification," and that ethical rules in many jurisdictions would have required the judge to recuse himself under these circumstances.

4. A due process violation based on a judge's failure to recuse himself does not amount to harmless error even if the jurist's vote was not decisive on a multimember court. The deliberations of an appellate panel are confidential, and it is not possible to determine whether a particular jurist's position may have influenced the views of his or her colleagues. In addition, due process guarantees an opportunity to present one's claims to a court which is not burdened by any temptation to be affected by the fact that a member of the court participated in the case as a prosecutor.

4. In a dissenting opinion, Chief Justice Roberts and Justice Alito stated that although they did not believe that due process required the judge to recuse himself, "[t]hat does not mean . . . that it was appropriate" for the judge to participate in the case. The dissenters noted State court decisions and ethic opinions that would prohibit a prosecutor from serving as judge in a case which he previously prosecuted, and found that it was up to State authorities to determine whether recusal should have been required.

Traffic

People v. Geiler, 2016 IL 119095 (No. 119095, 7/8/16)
The mandatory/directory distinction involves the question of whether the failure to comply with a particular procedural step will or will not invalidate a governmental action. Courts presume that procedural commands to government officials are directory. The presumption is overcome and a provision becomes mandatory only if: (1) negative language in the statute or rule prohibits further action where there is noncompliance; or (2) the right the statute or rule protects would generally be injured by a directory reading.

Illinois Supreme Court Rule 552 governs the processing of traffic citations and imposes an obligation on the arresting officer to transmit specific portions of the ticket to the circuit court within 48 hours after the
arrest. Here the arresting officer gave defendant a speeding ticket on May 5 but did not transmit the ticket to the circuit court until May 9, clearly beyond the 48 hour time limit. There was no dispute that Rule 552 was violated; the only issue was the appropriate consequences for the violation.

Rule 552 merely provides that the arresting officer shall transmit the ticket to the circuit court within 48 hours. It does not specify any consequences for the violation or contain nay negative language prohibiting prosecution or further action where there has been noncompliance. Thus the negative language exception does not apply.

Rule 552 is designed to ensure judicial efficiency and uniformity in processing tickets. A directory reading of Rule 552 would not generally injure judicial efficiency or uniformity. In this case, there was no evidence that the delay in transmitting the citations impaired the trial court's management of its docket. There was also no indication that the delay would ordinarily prejudice the rights of a defendant. A defendant's first appearance on a traffic citation must be set within 14 and 60 days after arrest. Thus even if the citation is not transmitted within 48 hours, it may still be filed before defendant's first court appearance and he would be unaffected by the delay.

The court therefore concluded that Rule 552 is directory and no specific consequence is triggered by noncompliance. But a defendant may still be entitled to relief if he can demonstrate that he was prejudiced by the violation.

Sex Offenses

People v. Grant, 2016 IL 119162 (No. 119162, 5/19/16)
The Supreme Court held that where a person committed to DOC as a sexually dangerous person files a recovery petition, the State does not have the right to hire an independent expert. Noting that the Sexually Dangerous Persons Act requires that DOC employees prepare a report to be submitted to the trial court, the court concluded that the legislature did not contemplate that the State would hire an additional expert.

The court found that it need not decide whether there could be circumstances under which the State could show sufficient bias on the part of a DOC evaluator to justify allowing it to hire an independent expert, but noted that even if such circumstances arose the trial court would appoint an independent expert rather than allow the State to handpick the expert it wanted.

People v. Minnis, 2016 IL 119563 (No. 119563, 10/20/16)
Mark Minnis was convicted of criminal sexual abuse for engaging in an act of sexual penetration with a 14-year-old when he was 16. By virtue of that conviction, Minnis was required to register as a sex offender. The registration provision requires, in part, that an offender disclose and periodically update information about their internet identities. The notification law makes this information available to the public for adult sex offenders, and to a more limited group of individuals in the case of juvenile sex offenders.

Initially, Minnis disclosed two email addresses and one Facebook account. In a later registration, he omitted the Facebook account. Officers subsequently viewed Minnis's active, public Facebook profile, and Minnis was charged with failure to register for failing to disclose his Facebook page. The circuit court found the required disclosure of internet identities to be overbroad and dismissed the charge. The State appealed to the Illinois Supreme Court as a matter of right.

The Supreme Court reversed. First, the Court noted that the challenge had to be considered as a facial challenge because the lower court had not held an evidentiary hearing or made any factual findings necessary for evaluation of an "as-applied" challenge.

The Court went on to find that the registration requirement in question was a content-neutral limitation on speech, and thus was subject to intermediate, rather than strict, scrutiny. To survive intermediate scrutiny, the regulation must serve or advance a substantial government interest unrelated to the suppression of free

speech and must not burden substantially more speech than necessary to further that interest.

The Court found that the internet disclosure provision advances the substantial government interests of preventing sex offenses against children and protecting the public from the danger of recidivist sex offenders. The Court concluded that, while they are broad, that breadth is required for the public to be able to protect itself because the internet disclosure requirements enable the public to avoid communicating with a registered sex offender.

In reaching its decision, the Court rejected defendant's argument that the internet disclosure provision is "poor policy," deferring to the legislature for determination of whether legislation is good policy and noting that the Court's role is limited to determining whether legislation is constitutional.

In re A.C., 2016 IL App (1st) 153047 (No. 1-15-3047, 5/18/16)
The combination of the Sex Offender Registration Act (730 ILCS 150/1) and the Sex Offender Community Notification Law (730 ILCS 152/101) (SORA) as applied to juveniles does not violate due process or the eighth amendment/proportionate penalties clauses of the federal and Illinois constitutions. SORA does not violate substantive due process since it does not affect fundamental rights and there is a rational relationship between SORA's restrictions and the State's legitimate interests. SORA does not violate procedural due process since SORA only applies after a criminal conviction and there is no need for further hearings. And SORA does not violate the eighth amendment/proportionate penalties clause since it does not involve punishment.

People v. Pollard, 2016 IL App (5th) 130514 (No. 5-13-0514, 5/10/16)
The Sex Offender Registration Act (730 ILCS 150/1) and its attendant statutory restrictions (SORA) do not violate due process or the Eighth Amendment/proportionate penalties clauses of the federal and Illinois constitutions. SORA does not violate substantive due process since it does not affect fundamental rights and there is a rational relationship between the SORA restrictions and the State's legitimate interests. SORA does not violate procedural due process since SORA only applies after a criminal conviction which provides all the procedural protections required by due process. And SORA does not violate the Eighth Amendment/Proportionate Penalties Clause since it does not involve punishment.

Guns & Other Weapons

People v. McFadden, 2016 IL 117424 (No. 117424, 6/16/16)
A statute that is facially unconstitutional is void *ab initio*, meaning that it was constitutionally infirm from the moment of its enactment and is therefore unenforceable. A defendant may not be prosecuted under a criminal statute that is facially unconstitutional and must be allowed to vacate a judgment of conviction premised on that statute.

Defendant was convicted of unlawful use of a weapon by a felon (UUWF) based on possessing of a firearm after he had been convicted of aggravated unlawful use of a weapon (AUUW). The UUWF statute prohibits the possession of a firearm by any person who has been convicted of a felony. 720 ILCS 5/24- 1.1(a).

Defendant pled guilty to AUUW in 2002. He pled guilty to UUWF in 2008. In 2013, the Illinois Supreme Court held that the portion of the AUUW statute under which defendant was convicted was facially unconstitutional. *Aguilar,* 2013 IL 112116. On direct appeal from his UUWF conviction, defendant argued that the State failed to prove an essential element of the offense since the predicate offense, AUUW, was based on a statute that was facially unconstitutional and void ab initio.

The Illinois Supreme Court rejected defendant's argument. The court held that the void *ab initio* doctrine would enable defendant to vacate his 2002 AUUW conviction by filing an appropriate pleading. But a conviction remains valid until a court with proper reviewing authority has declared otherwise. Although *Aguila*r may provide a basis for vacating defendant's AUUW conviction, it did not automatically overturn that conviction. Thus when defendant committed UUWF he had a valid felony conviction that made it unlawful for him to possess firearms.

Justices Kilbride and Burke in dissent would have held that a conviction based on a facially unconstitutional statute could never have been validly established or prosecuted and thus could not form the predicate felony for UUWF.

People v. Cherry, 2016 IL 118728 (No. 118728, 9/22/16)
A defendant commits armed violence when he personally discharges a firearm while committing any felony except a felony that makes the possession or use of a dangerous weapon either an element of the base offense, an aggravated or enhanced version of the offense, or a mandatory sentencing factor that increases the sentencing range.720 ILCS 5/33A-2(b).

Defendant was convicted of armed violence predicated on aggravated battery causing great bodily harm. 720 ILCS 12-4(a). Defendant argued that aggravated battery could not serve as the predicate offense for armed violence since aggravated battery with a firearm is an enhanced version of aggravated battery and it makes the possession or use of a dangerous weapon the element which enhances the offense. 720 ILCS 5/12-4.2.

The court rejected defendant's argument. Possession or use of a weapon is not an element of the base offense, aggravated battery. Aggravated battery with a firearm is not an enhanced version of aggravated battery; it is an enhanced version of battery. Both forms of aggravated battery require proof of battery plus an additional aggravating factor. Aggravated battery with a firearm and aggravated battery causing great bodily harm are separate aggravated versions of battery. Aggravated battery causing great bodily harm may thus serve as the predicate offense for armed violence.

People v. Hernandez, 2016 IL 118672 (No. 118672, 5/19/16)
1. The proportionate penalties clause of the Illinois Constitution provides that all penalties shall be determined according to the seriousness of the offense. Ill. Const. 1970, art. I, §11. Under the "identical elements" test, a sentence will violate the clause if it is greater than the sentence for an offense with identical elements. If the legislature provides two different penalties for the exact same elements, then one of the penalties has not been set in accordance with the seriousness of the offense. Where identical offenses yield different penalties, the penalties are unconstitutionally disproportionate and the greater penalty cannot stand.

2. Defendant was convicted of armed robbery and sentenced to an extended Class X term of 40 years imprisonment. Defendant was armed with a heavy pair of tin snips and the State charged this as a "dangerous weapon, a bludgeon." Defendant eventually filed a postconviction petition arguing that his sentence violated the proportionate penalties clause. The circuit court agreed and held that the armed robbery statute was facially unconstitutional because it carried a harsher penalty, a Class X sentence, than armed violence with a Category III weapon, which had the same elements but only carried a Class 2 sentence.

3. The Supreme Court reversed the circuit court, holding that armed robbery with a dangerous weapon did not have the same elements as armed violence with a category III weapon. A dangerous weapon for the purposes of armed robbery includes objects that may be used in a dangerous manner. By contrast, a category III weapon in the armed violence statute is specifically defined as a "a bludgeon, black-jack, slungshot, sand-bag, sand club, metal knuckles, billy, or other dangerous weapon of like character." 720 ILCS 5/33A-1, 33A-2.

The tin snips used here qualified as a dangerous weapon under the armed robbery statute since they were heavy and large enough that they may be used in a dangerous manner. But while the tin snips might be capable of being used as a bludgeon, they are not typically identified as such and thus are not "of like character" to the bludgeon-type weapons included as category III weapons.

Sentencing

People v. Rizzo, 2016 IL 118599 (No. 118599, 6/16/16)
1. A proportionate penalties challenge under the Illinois constitution can be based on either of two theories. First, the defendant can argue that the penalty for an offense is harsher than the penalty for a different offense which contains identical elements. Second, the defendant can argue that the penalty for a particular offense is so disproportionate that it shocks the moral sense of the community or is cruel and degrading.

Here, the trial court concluded that the prohibition of supervision for aggravated speeding (i.e., more than 40 mph in excess of the speed limit (625 ILCS 5/11-601.5(b)) was cruel and degrading. In making the finding, the trial court compared aggravating speeding to other misdemeanors for which supervision is also precluded, and concluded that aggravated speeding is a less serious offense because it does not involve bodily injury or physical harm.

The Supreme Court rejected the trial court's finding, concluding that the lower court had in effect revived the discredited cross-comparison test for evaluating proportionate penalties claims. The court concluded that even assuming that supervision, which is a statutory deferral of prosecution, constitutes a "penalty," the prohibition of supervision is not in any sense so shocking or degrading as to violate the proportionate penalties clause:

> [T]he legislature's prohibition of the dispositional option of supervision . . . does not even approach the "cruel and degrading" standard requisite for a finding of unconstitutionality. We do not believe our society has devolved to the permissive point that the legislature is obligated to provide an escape hatch for those who have shown such a blatant disregard for posted speed restrictions.

2. The court also found that the trial judge erred by considering the collateral consequences of a misdemeanor conviction, such as being required to disclose a conviction on job or loan applications, as factors in determining whether there is a proportionate penalties violation. The proportionate penalties clause applies only to the criminal process involving direct action by the government to inflict punishment, and not to possible actions by non-governmental actors.

3. The court also rejected the argument that due process is violated by the prohibition of supervision for aggravated speeding. Where legislation does not affect a fundamental constitutional right, the rational basis test is applied to determine whether a statute violates due process. A statute attacked on due process grounds

will be upheld so long as it bears a reasonable relationship to the public interest sought to beprotected and the means employed are a reasonable method of achieving the desired objective. The court concluded that because the legislature intended to address excessive speeding, which has a potential of creating grave injury to the public, placing restrictions on the dispositional option of supervision is not an unreasonable or arbitrary means of addressing the perceived evil.

The trial court's finding of unconstitutionality was reversed and the cause remanded for further proceedings.

People v. Jones, 2016 IL 119391 (10/10/16)
Derrick Jones was convicted of aggravated robbery, a Class 1 felony. Prior to trial, the court inquired of the parties whether the sentencing range would be 4-to-30 years upon a conviction, and the parties agreed that it would. The parties believed Jones to be extended-term eligible based upon a prior juvenile adjudication of residential burglary.

At issue in the Illinois Supreme Court was whether Jones's prior juvenile adjudication was the equivalent of a prior conviction for *Apprendi* purposes and whether a presentence investigation report (PSI) was adequate proof of that prior adjudication. In a 4-3 opinion, the Court upheld the defendant's extended-term sentence.

The Court noted a split of authority on the question of whether a juvenile adjudication constituted a prior conviction for *Apprendi* purposes. Ultimately, the court found that both a prior conviction and prior delinquency adjudication are the result of an individual's prior unlawful behavior and both have the same constitutional safeguards, rendering them reliable. The Court rejected any distinction from the lack of a jury trial right in delinquency proceedings because there is no constitutional right to a jury trial for a juvenile. As a matter of first impression, the Court held that a delinquency adjudication is the same as a prior conviction and thus falls within the exception to *Apprendi* and within an exception to the statutory requirement that extended-term eligibility factors be pled in the charging instrument (725 ILCS 5/111-3(c-5)).

The Court went on to find that the PSI was adequate to prove the existence of the prior delinquency adjudication without running afoul of *Shepard v. U.S.* because *Shepard* dealt with the types of information a court can rely upon to determine facts *about* a prior conviction rather than simply to determine the *existence of* a prior conviction.

Justice Burke authored a dissent, joined by Justice Kilbride and Chief Justice Garman. The dissent engaged in a statutory construction analysis and concluded that prior "conviction" meant exactly that, a "conviction." Nothing numerous instances were a "conviction" has been held not to include a delinquency adjudication, the dissent would have found plain error in the defendant's extended-term sentence.

People v. Hernandez, 2016 IL 118672 (No. 118672, 5/19/16)

1. The proportionate penalties clause of the Illinois Constitution provides that all penalties shall be determined according to the seriousness of the offense. Ill. Const. 1970, art. I, §11. Under the "identical elements" test, a sentence will violate the clause if it is greater than the sentence for an offense with identical elements. If the legislature provides two different penalties for the exact same elements, then one of the penalties has not been set in accordance with the seriousness of the offense. Where identical offenses yield different penalties, the penalties are unconstitutionally disproportionate and the greater penalty cannot stand.

2. Defendant was convicted of armed robbery and sentenced to an extended Class X term of 40 years imprisonment. Defendant was armed with a heavy pair of tin snips and the State charged this as a "dangerous weapon, a bludgeon." Defendant eventually filed a postconviction petition arguing that his sentence violated the proportionate penalties clause. The circuit court agreed and held that the armed robbery statute was facially unconstitutional because it carried a harsher penalty, a Class X sentence, than armed violence with a Category III weapon, which had the same elements but only carried a Class 2 sentence.

3. The Supreme Court reversed the circuit court, holding that armed robbery with a dangerous weapon did not have the same elements as armed violence with a category III weapon. A dangerous weapon for the purposes of armed robbery includes objects that may be used in a dangerous manner. By contrast, a category III weapon in the armed violence statute is specifically defined as a "a bludgeon, black-jack, slungshot, sand-bag, sand club, metal knuckles, billy, or other dangerous weapon of like character." 720 ILCS 5/33A-1, 33A-2.

The tin snips used here qualified as a dangerous weapon under the armed robbery statute since they were heavy and large enough that they may be used in a dangerous manner. But while the tin snips might be capable of being used as a bludgeon, they are not typically identified as such and thus are not "of like character" to the bludgeon-type weapons included as category III weapons.

Juveniles

People v. Reyes, 2016 IL 119271 (No. 119271, 9/22/16)
Defendant, who was 16 years old at the time of the offense, was tried as an adult and convicted of first degree murder and two counts of attempted murder. The trial court imposed a mandatory minimum sentence of 45 years for first degree murder which included a 25-year mandatory firearm enhancement. The court also sentenced defendant to 26 years for the two attempt murder convictions, both of which included a 20-year mandatory firearm enhancement. All of the sentences were required to run consecutively resulting in a mandatory minimum sentence of 97 years. Defendant was required to serve a minimum of 89 years before he would be eligible for release.

The Illinois Supreme Court held that defendant's sentence was a de facto mandatory life sentence that was unconstitutional under *Miller v. Alabama*, 567 U.S. ___, 132 S.Ct. 2455 (2012). A mandatory term-of-years sentence that cannot be served in one lifetime has the same practical effect as an actual mandatory life sentence. In either situation the defendant will die in prison. Miller held that a juvenile may not be sentenced to a mandatory unsurvivable prison term unless the court first considers his youth, immaturity, and potential for rehabilitation.

Here defendant was 16 when he committed the offense and since he must serve 89 years, he will remain in prison until he is 105. Defendant's sentence is therefore a mandatory de facto life sentence.

The court vacated defendant's sentence and remanded for a new sentencing hearing under the newly enacted sentencing scheme in 730 ILCS 5/5-4.5-105 which requires the sentencing court to take into account specific factors in mitigation when sentencing a juvenile. Additionally, the court has discretion to not impose the firearm enhancements. Without those enhancements defendant's minimum aggregate sentence would be 32 years, a term that is not a de facto life sentence.

People v. Aikens, 2016 IL App (1st) 133578 (Nos. 1-13-3578 & 1-15-1522, 9/12/16)
The proportionate penalties clause of the Illinois Constitution was violated by application of the adult sentencing scheme for attempt murder of a peace officer with a firearm to a 17-year-old who was tried as an adult. The minor was sentenced to the mandatory minimum term totaling 40 years - 20 years for attempted murder of a peace officer plus 20 years for personally discharging a firearm in the course of that offense. In sentencing defendant, the trial court noted that defendant had no prior record and had a difficult upbringing, and that the mandatory minimum sentence "seems to be an unimaginable amount of time . . . for a teenage child." A

mitigation specialist testified that defendant had more potential than any client she had evaluated, that defendant had a supportive adopted family, and that the Illinois Institute of Technology had granted defendant early acceptance due to his academic excellence.

1. An "as applied" constitutional challenge requires defendant to show that the statute at issue violates the Constitution as applied to his or her particular case. A challenge under the proportionate penalties clause contends that the penalty in question was not determined according to the seriousness of the offense. A violation may be shown where the penalty imposed is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.

The Illinois Supreme Court has not defined what kind of punishment is cruel, degrading, or wholly disproportionate to the offense, because concepts of elemental decency and fairness evolve as society evolves. Thus, to determine whether a penalty shocks the moral sense of the community, courts must consider objective evidence as well as the community's changing standards of moral decency.

2. Noting that no one was injured in the offense, the court concluded that as applied to defendant the sentencing scheme violated the proportionate penalties clause because defendant had no prior criminal history, was described by the mitigation specialist as full of potential and able to fully rehabilitate as a contributing member of society, and was sentenced to the statutory minimum by the trial court who noted that defendant was young, had no criminal history, and had a "quite troubling" background. The court stressed that recent changes to the Juvenile Court Act, while inapplicable to this case, illustrate a "changing moral compass in our society when it comes to trying and sentencing juveniles as adults."

Defendant's sentence was reversed and the cause remanded for resentencing.

In re H.L., 2016 IL App (2d) 140486-B (No. 2-14-0486, 5/12/16)
1. The court noted that in 2012, 75 ILCS 45/5-750(1) was amended to require that before a delinquent minor can be sentenced to the Department of Corrections, the trial court must make an explicit finding that commitment to DOC is the least restrictive alternative. Where the trial court failed to make such an explicit finding, the cause must be remanded for compliance with the procedure required under the Juvenile Court Act.

2. The court rejected the State's argument that the required finding need not be explicit where the trial court mentioned alternative dispositions in announcing the disposition or where there was evidence that commitment to DOC was the least

restrictive disposition. The statutory amendment adopted in 2012 clearly requires an explicit finding, and cannot be rewritten under the guise of interpretation. The commitment order was reversed and the cause remanded for further proceedings.

In re Justin F., 2016 IL App (1st) 153257 (No. 1-15-3257, 6/7/16)
705 ILCS 405/5-750(1) provides that before committing a delinquent to the Department of Juvenile Justice, the trial court must make certain findings and consider several individualized factors. The court held that in this case, the record failed to show that the court considered one of the individualized factors - the availability of services within the Department of Juvenile Justice that will meet the individualized needs of the minor. 705 ILCS 405/5-750(1)(b)(G). Because there was no testimony or any written report in the record addressing this issue, the trial court erred by committing the minor to the Department of Juvenile Justice. The commitment order was vacated and the cause remanded for further proceedings.

What Comes Next?

U.S. Supreme Court

Pena-Rodriguez v. Colorado, US Sup. Ct. Docket No. 15-606 (arg'd 10/11/16)

Miguel Angel Pena-Rodriguez was convicted of unlawful sexual conduct and harassment in state trial court. After the entry of a guilty verdict, two jurors informed Pena-Rodriguez's counsel that one of the other jurors made racially biased statements about Pena-Rodriguez and the alibi witness during jury deliberations. The trial court authorized Pena-Rodriguez's counsel to contact the two jurors for their affidavits explaining what the "biased" juror said about Pena-Rodriguez or his alibi witness. Based on these affidavits, which related racially biased statements about Pena-Rodriguez's likely guilt and the alibi witness' lack of credibility because both were Hispanic, Pena-Rodriguez moved for a new trial. The trial court denied the motion, and the Colorado Court of Appeals affirmed. The Supreme Court of Colorado held the jurors' affidavits were inadmissible under Rule 606(b) of Colorado's Rules of Evidence, which prohibits juror testimony on any matter occurring during the jury deliberations. The Supreme Court of Colorado also held Rule 606(b) did not violate Pena-Rodriguez's Sixth Amendment right to an impartial jury because Pena-Rodriguez had waived that right by failing to adequately question jurors about their racial bias during voir dire.

Question Presented:

Can a no-impeachment rule bar evidence of racial bias offered to prove a violation of the Sixth Amendment right to an impartial jury?

Illinois Supreme Court

No. 120796
In re Destiny P., Direct appeal (Cook)
Whether the Juvenile Court Act (705 ILCS 405/5101(3) and 405/5-605(1)) violates equal protection because it fails to authorize a jury trial for a minor facing a charge of first degree murder. (§33-5(c)(1))

No. 120997
People v. Campanelli, Direct appeal (Cook)
1. Whether a public defender's office constitutes a "law firm" under the rules of professional conduct and may therefore refuse an appointment on conflict of interest

grounds where co-defendants would be represented by different assistant public defenders. (§§13-5(a), 13-5(d)(2)(c))

2. Whether in this case there was a conflict of interest between various codefendants such that some clients should be represented by counsel other than the Public Defender. (§13-5(a))

No. 120797
People v. Casas, Defense leave granted 9/28/16 from 2016 IL App (2d) 150456
Whether violation of bail bond is a continuing offense so that the statute of limitations is tolled until the offender is returned to custody. (§§6-1, 6-3)

No. 118966
People v. Fort, Defense leave granted 7/24/15 from 2014 IL App (1st) 113315-U
Whether a juvenile who has been automatically transferred to adult court based on the nature of the offense he was charged with, must be sentenced under the Juvenile Court Act when he is acquitted of the transferable offense and instead found guilty of a lesser non-transferable offense, and the State does not move to treat him as an adult for sentencing. (§33-6(d))

No. 120958
People v. Gray, State leave as a matter of right granted 9/28/16 from 2016 IL App (1st) 134012
Whether 725 ILCS 5/122A-3(3), which defines a "[f]amily or household member" for purposes of aggravated domestic battery to include "persons who have or have had a dating or engagement relationship" but not “casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts,” is unconstitutional as applied where the victim and defendant had a dating relationship which ended 15 years before the incident in question, because treating all persons who have dated at any time in the past as members of the same family or household has no rational relationship to any legitimate State interest. (§7-1(a)(1))

No. 120407
People v. Holmes, State leave granted 9/28/16 from 2015 IL App (1st) 141256
Whether the Fourth Amendment was violated by an arrest based on probable cause that the arrestee committed Aggravated Unlawful Use of a Weapon, where the arresting officer relied on the state of law at the time of the arrest but the statute

creating the offense was subsequently found unconstitutional in People v. Aguilar. (§§44-1(c)(1), 44-4(b))

No. 120443
People v. Howard, Defense leave granted 5/25/16 from 2016 IL App (3d) 130959
1. Whether 720 ILCS 5/11-9.3(d)(11)(I), which prohibits child sex offenders from being present in a school zone and defines "loitering" as "standing, sitting idly, whether or not the person is in a vehicle, or remaining in or around school or public property," is unconstitutionally vague because it fails to include either an improper purpose or overt-act requirement. (§46-1(c))

2. Whether defendant was proven guilty beyond a reasonable doubt of loitering within 500 feet of a school where it was undisputed that he had a proper purpose for being in the area - driving a friend so that she could drop off her grandchildren's lunch at the school. (§46-1(c))

No. 121072
People v. Pearse, Defense leave granted 9/28/16 from 2016 IL App (2d) 140051-U
1. Whether defendant violated the Sex Offender Registration Act (730 ILCS 150/3) where he was hospitalized for several days and then returned to his previously registered address, where defendant notified the police when he went to the hospital but failed to re-register his home address when he was discharged. (§46-7)

2. Whether the trial court erred in a prosecution for failing to register as a sex offender by giving non-IPI instructions which did not accurately state the elements of the charged offense. (§32-8(a))

No. 119484
People v. Ringland, Pirro, Saxen, Harris and Flynn, State leave granted 11/25/15 from 2015 IL App (3d) 130523
Whether 55 ILCS 5/3-9005(b), which permits the State's Attorney to appoint one or more special investigators to serve subpoenas, make return of process, conduct investigations that assist the State's Attorney in the performance of his or her duties, and exercise the powers possessed by investigators under the State's Attorneys Appellate Prosecutor's Act, authorizes the State's Attorney to appoint and equip investigators to staff a drug interdiction unit to patrol highways which pass through the county. (§41-1)

No. 120023
People v. Way, State leave granted 1/21/16 from 2015 IL App (5th) 130096
Whether aggravated DUI based on driving "while there was an amount of a drug, substance or compound in [one's] breath, blood, or urine resulting from the unlawful use or consumption of cannabis" (625 ILCS 5/11-501(a)(6), (d)(1)(C)) is a strict liability offense for which the State needs to prove only that defendant's driving was a proximate cause of the accident, so that defendant is not entitled to present evidence that the accident was actually the result of an unforeseeable physical condition (i.e., low blood pressure.) (§50-2(a))

Seeking Solutions to the Ever-Growing Dilemma of Securing Housing for Sex Offenders

Alyssa Williams-Schafer

Direction of Presentation

Learning objectives:

- Enhance the attendees' knowledge on the nature of sex offenders and offenses
- Enhance the attendees' knowledge of sex offender related legislation
- Enhance the attendees' knowledge regarding sex offender housing and the barriers to develop and maintain such housing

Sex Offender

What does that mean to you?

Startling Info from Jensen and Jensen – Understanding and Protecting Your Children From Child Molesters and Predators

http://www.wcsap.org/sites/wcsap.huang.radicaldesigns.org/files/uploads/documents/ProtectingYourChildren.pdf

- "The FBI estimates that there is a sex offender living in every square mile of the United States. One in ten men has molested children. Most child molesters are able to molest dozens of children before they are caught and have a three percent (3%) chance of being apprehended for their crimes. Boys and girls are at nearly equal risk to be abused and almost a quarter will be molested sometime before their 18th birthday. Fewer than five percent (5%) will tell anyone. The overwhelming majority of child victims are abused by someone they know and trust, someone most parents would never suspect."

Who are sex offenders?

Keep in Mind…

- The offender is not usually the greasy looking old man in a trench coat lurking in the bushes.
- Research indicates that over 90% of child sex abuse victims know their abuser – neighbors, relatives, ministers, music teachers, coaches, and the list goes on and on…

Spectrum of Offenses

- Child Pornography*
- Sexual Exploitation
- "Hands-Off Offenses" (Voyeurism & Exhibitionism)
- Minimal Contact Offenses (Frotteurism)
- Aggressive "Non-Violent" Offenses
- Forcible Penetration Offenses
- Sadistic/Ritualistic Offenses
- Sexual Homicide

Sex Offender Laws

Illinois Sex Offender Registration Act

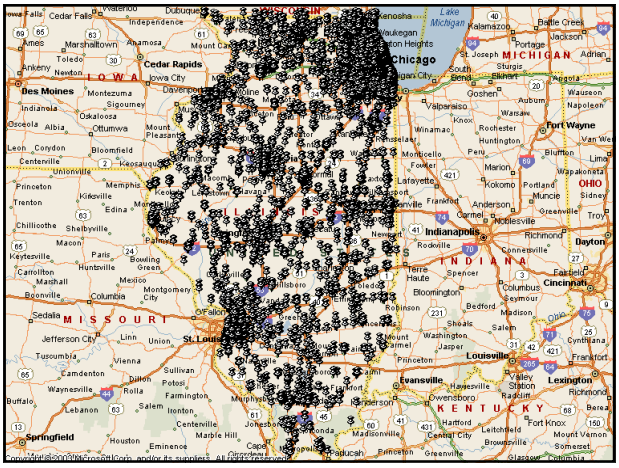
730 ILCS 150/

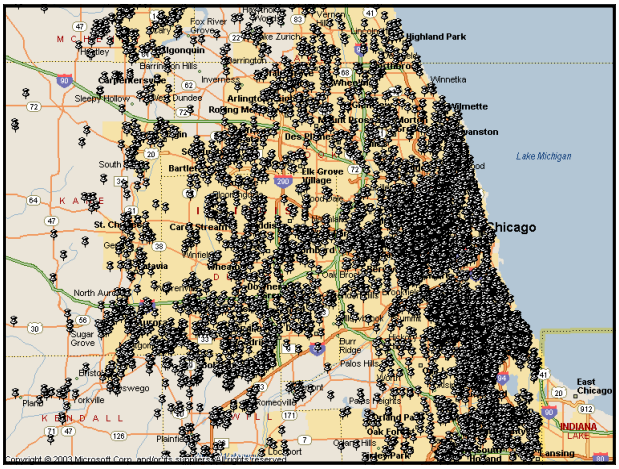
Sex Offender Registry

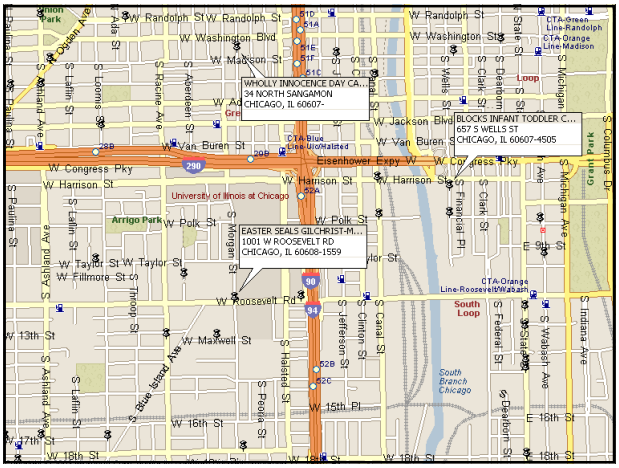
- The Illinois Sex Offender Registry is maintained by the Illinois State Police. It can be found at the following web address:

http://www.isp.state.il.us/sor/

Residency Restrictions







Child Sex Offender Offenses

720 ILCS 5/11-9.3

A child sex offender is defined as someone who is convicted of one of the following offenses and the victim is under the age of 18:

11-6 indecent solicitation of a child
11-14.3(a)(1) soliciting for a juvenile prostitute
11-1.50 criminal sexual abuse
10-2 aggravated kidnapping
10-3.1 aggravated unlawful restraint
10-5 (b)(10) child abduction
11-9.2 custodial sexual misconduct
11-11 sexual relations within families
11-14.3 (a)(2)(a) promoting prostitution
11-14.4(a)(4) exploitation of a child
11-20.1 child pornography
11-1.20 criminal sexual assault
11-1.40 predatory criminal sexual assault
11-25 grooming
12-33 ritualized abuse of a child
11-9 public indecency, when committed on school property
11-14(a)(1) keeping a place of juvenile prostitution
11-9.1 sexual exploitation of a child
11-18.1 patronizing a juvenile prostitute
10-1 kidnapping
10-3 unlawful restraint
10-4 forcible detention
11-6.5 indecent solicitation of an adult
11-9.5 sexual misconduct w/p with disability
11-14.3(a)(1) promoting prostitution
11-14.3 (a)(2)(c) promoting prostitution
11-14.4(a)(2) & (a)(3) juvenile pimping
11-20.1 (B) aggravated child pornography
11-1.30 aggravated criminal sexual assault
11-1.60 aggravated criminal sexual abuse
11-26 traveling to meet a minor
11-9.1(a) permitting sexual abuse of a child

Child Sex Offender Offenses

Although a person may be registering under the MVAY registry, if the person is convicted of an offense under the definition of a child sex offender contained in 720 ILCS 5/11-9.3 or 9.4-1, the individual must abide by all restriction requirements for a child sex offender.

These VOAY offenses include:

10-1 kidnapping
10-2 aggravated kidnapping
10-3 unlawful restraint
10-3.1 aggravated unlawful restraint
10-4 forcible detention
10-5 (b)(10) child abduction

Residency and loitering restrictions remain with all offenders even after the individual has completed his/her registration requirements.

Since the individual still has the conviction on his/her criminal history, the individual is still considered a child sex offender but does not have registration requirements.

These requirements do not pertain to adjudicated delinquents.

720 ILCS 5/11-9.3 – residency restrictions

- A child sex offender cannot reside within 500 feet of a school or property comprising a school where any persons under the age of 18 attend, unless the sex offender owned the house/property prior to 7-7-2000.
- According to 5/11-9.3 (c)(2.5)(ii) …those individuals convicted of 11-1.50 (b) & (c) - criminal sexual abuse - are *excluded* from the residency restrictions
- The 500 foot distance shall be measured from edge of property to edge of property.

720 ILCS 5/11-9.3 – residency restrictions

- Child sex offenders cannot knowingly reside within 500 feet of a playground, child care institution, day care center, part time child care facility, or a facility providing programs and services exclusively directed toward persons under 18 years of age.
  - For a playground or an exclusive facility, if the CSO owned the property and it was purchased prior to 7-1-00, they may reside there.
  - For child care institutions, day care centers, and part time day care centers, if a CSO owned the property and it was purchased prior to 6-26-06, they may reside there.

720 ILCS 5/11-9.3 – residency restrictions

- Day care home and group day care home have been added to the residency restrictions … unless the property was owned by the sex offender prior to 8-14-08.
  - "Day care homes" means family homes which receive more than 3 up to a maximum of 12 children for less than 24 hours per day. The number counted includes the family's natural or adopted children and all other persons under the age of 12. The term does not include facilities which receive only children from a single household.
  - "Group day care home" means a family home which receives more than 3 up to a maximum of 16 children for less than 24 hours per day. The number counted includes the family's natural or adopted children and all other persons under the age of 12.

720 ILCS 5/11-9.3 – residency restrictions

Child sex offenders cannot knowingly reside within 500 feet of the victim of the sex offense if the victim is under the age of 21, unless the sex offender owned the property and it was purchased prior to 8-22-02.

720 ILCS 5/11-9.3 (schools)

It is unlawful for a child sex offender to knowingly be present in any school building, on real property comprising any school, or in any conveyance owned, leased, or contracted by a school to transport students to or from school or a school related activity when persons under the age of 18 are present.

720 ILCS 5/11-9.3 (schools)

The exception to this is if the child sex offender is a parent or guardian and is…

- Attending a conference with school personnel to discuss the progress of his/her child academically or socially
- Participating in child review conferences in which evaluation and placement decisions may be made with respect to the child and special education services or
- Attending conferences to discuss other student issues concerning the child's retention or promotion

The child sex offender must still notify the principal of the school of his/her presence at the school

720 ILCS 5/11-9.3 (schools)

- Or unless the offender has permission to be present from the superintendent or the school board or in the case of a private school from the principal.
- In the case of a public school, if permission is granted, the superintendent or school board president must inform the principal of the school where the sex offender will be present.
- If the sex offender has been granted permission to be on school property: the sex offender is responsible for notifying the principal's office when he/she arrives on school property and when he/she departs. If the sex offender is to be present in the vicinity of children, the sex offender has the duty to remain under the direct supervision of a school official.

720 ILCS 5/11-9.3 (schools)

- (a-5) Provides that it is a Class 4 felony for a child sex offender to knowingly be present within 100 feet of a site *posted* as a pick-up or discharge stop for a conveyance owned, leased, or contracted by a school to transport students to or from school or a school related activity when one or more persons under the age of 18 are present at the site.
- (b) A child sex offender cannot knowingly loiter within 500 feet of a school building or real property comprising any school while persons under the age of 18 are present…unless for the reasons described before.

720 ILCS 5/11-9.3 (parks)

- Child sex offenders cannot knowingly be present in any public park building or on real property comprising a park when persons under the age of 18 are present and approach, contact, or communicate with a child unless the offender is the parent or guardian of a person under the age of 18 present in the building or on the grounds.
- Child sex offenders cannot knowingly loiter on a public way within 500 feet of a public park building or property comprising any public park while persons under the age of 18 are present and approach, contact, or communicate with a child unless the offender is the parent or guardian of a person under the age of 18 present in the building or on the grounds .
- "Public park" includes a park, forest preserve, bikeway, trail or conservation area under the jurisdiction of the State or a unit of local government.
- Any person who violates this section is guilty of a Class 4 felony.

720 ILCS 5/11-9.4-1 Presence in Parks

effective 1-1-2011

- Both child sex offenders and sexual predators (age of the victim does not matter) are prohibited from being present or loitering in or near a public park.
- Public park includes a park, forest preserve, bikeway, trail or conservation area under the jurisdiction of the State or a unit of local government

720 ILCS 5/11-9.4-1 Presence in Parks

- It is unlawful for a sexual predator or a child sex offender to knowingly be present in any public park building or on real property comprising any public park.
- It is unlawful for a sexual predator or a child sex offender to knowingly loiter on a public way comprising any public park.
- Any person who violates this section is guilty of a Class A misdemeanor.

Effective January 1, 2013

- Bikeway and trail are added to the definition of a public park in both 9.3 and 9.4-1.

"Public Park" includes a park, forest preserve, bikeway, trail, or conservation area under the jurisdiction of the State or a unit of local government.

Other Restrictions for Child Sex Offenders

Effective January 1, 2013

- *720 ILCS 5/11-9.3 is amended* … it is unlawful for a child sex offender to participate in a holiday event involving children under 18 years of age, including but not limited to distributing candy on Halloween.

* exception: those convicted of 11-1.50 (c) or those child sex offenders who are a parent/guardian of children under 18 that are present in the home and other non-familial minors are not present.

Effective January 1, 2014

- *720 ILCS 5/11-9.3 (a-10) is amended* … it is unlawful for a child sex offender to knowingly be present in any public park building, a playground or recreation area within any publicly accessible privately owned building, or on real property comprising any public park when persons under the age of 18 are present in the building or on the grounds and to approach, contact, or communicate with a child under 18 years of age, unless the offender is a parent or guardian of a person under 18 years of age present in the building or on the grounds.

720 ILCS 5/11-9.3

- It is unlawful for a child sex offender to knowingly operate, manage, be employed by, volunteer at, be associated with, or knowingly be present at any:

(i) facility providing programs or services exclusively directed towards persons under the age of 18;
(ii) day care center;
(iii) part day child care facility;
(iv) child care institution, or
(v) school providing before and after school programs for children under 18 years of age.

720 ILCS 5/11-9.3

- It is unlawful for a child sex offender to knowingly operate, manage, be employed by, or be associated with any county fair when persons under the age of 18 are present.

720 ILCS 5/11-9.3

Effective 8/4/09

- Provides that it is unlawful for a child sex offender to knowingly *operate*, whether authorized to do so or not, any of the following vehicles:
  - a vehicle which is specifically designed, constructed or modified and equipped to be used for the retail sale of food or beverages, including but not limited to an ice cream truck; an authorized emergency vehicle; or a rescue vehicle.

720 ILCS 5/11-9.3

Effective 8-14-08

It is a Class 4 felony for a child sex offender to knowingly offer or provide any programs or services to persons under 18 years of age in his or her residence or the residence of another or in any facility for the purpose of offering or providing such programs or services, whether such programs or services are offered or provided by contract, agreement, arrangement, or on a volunteer basis.

720 ILCS 5/11-9.3

Effective 1-1-09

This Act makes it unlawful for any child sex offender who owns and resides at a residential real estate unit to knowingly rent any residential unit within the same building in which he or she resides to a person who is a parent/guardian to an individual under the age of 18.

This only applies to leases or other rental agreements entered into after 1-1-09.

Sex Offender Housing

Public Act 94-0161 Housing

- Transitional Housing for sex offenders in the State of Illinois is governed by 20 Illinois Administrative Code Part 800. This administrative code was created after the passage of House Bill 350 during the 94th legislative session (Public Act 94-0161). This particular piece of legislation places limits on sex offenders who are on supervision. The legislation prohibits a sex offender on parole or probation from living at the same address, apartment building, apartment complex, condo, or condo complex as another person who is a sex offender unless they reside in a licensed facility. The legislation requires the Illinois Department of Corrections to license transitional living homes for sex offenders.

Public Act 94-0161 HB 350

- This residency requirement does not include sex offenders residing in Department of Corrections licensed transitional housing facilities, any facility operated or licensed by DCFS or DHS, or any licensed medical facility.

Public Act 94-0161 Housing

The following illustrates the requirements for transitional living facilities for sex offenders as set forth by the code.

- The facility must be located more than 500 feet from any school, day care, facility providing programs or services exclusively directed toward persons under 18 years of age, or playground.
- The facility must have a physical structure that provides for security measures 24 hours per day and seven days per week. Security has been defined by IDOC as a registered security guard in the State of Illinois as per 225 ILCS 447.
- The facility must limit residential occupancy of the facility to individuals over the age of 18.

Public Act 94-0161 Housing

- The number of offenders that can be housed in the home is dependent on the type of license that the home has. Transitional Housing licenses are issued for the specific level of the facility.
  1) Level I licenses shall be issued to facilities that may house more than one but not more than 20 sex offenders on parole, probation, or supervision.
  2) Level II licenses shall be issued to facilities that have a Department of Human Services license under 77 Ill. Adm. Code 2060 and that have fewer than ten sex offender residents, or no more than ten percent of the total residency be sex offenders on parole, probation, or supervision, whichever is less.

Public Act 94-0161 Housing

- The facility must provide housing to sex offenders on parole, probation, or supervision for a period not to exceed 90 days, unless otherwise approved by the Director of the Department or designee.
- The facility must have a transitional housing manager on site 24 hours a day/seven days a week. The facility must employ a case manager for every 20 sex offenders.
- The facility must provide a structured environment for congregate living that shall offer regular scheduled group sessions that are held a minimum of three days per week

Public Act 94-0161 Housing

- The facility must submit treatment and counseling plans for each sex offender to the Director (or designee) for review and approval.
- The facility must have a written linkage agreement or agreements with Sex Offender Management Board certified providers to provide the opportunity of sex offender treatment.
- The facility must provide a referral network to be utilized by sex offenders for necessary medical, mental health, substance abuse, and vocational or employment resources, and maintain any legally required confidentiality of identifying information.

Public Act 94-0161 Housing

- The facility must have the ability for all sex offenders to be monitored electronically and allow access, by technicians maintaining the electronic monitoring equipment, to the premises as necessary.
- The facility must notify the police department, public and private elementary and secondary schools, public libraries, and each residential home and apartment complex within 500 feet of the transitional housing facility of their initial licensure as a transitional housing facility, and of their continuing operation as a transitional housing facility annually thereafter.
- Upon their initial licensure as a transitional housing facility and during their licensure, each facility shall maintain at their main entrance a visible and conspicuous exterior sign identifying themselves as, in letters at least 4 inches tall, a "Department of Corrections Licensed Transitional Housing Facility".

Public Act 94-0161 Housing

- Upon their initial licensure as a transitional housing facility, each facility shall file in the office of the County Clerk of the County in which such facility is located, a certificate setting forth the name under which the facility is, or is to be, operated, and the true or real full name or names of the person, persons or entity operating the same, with the address of the facility. Notice of the filing of such certificate shall be published in a newspaper of general circulation published within the county in which the certificate is filed.
- Each licensed transitional housing facility shall be identified on the Illinois State Police Sex Offender Registry website, including the address of the facility together with the maximum possible number of sex offenders that the facility could house.

Where has this taken us…

Sex Offender Housing

- Transitional homes for sex offenders that IDOC and other agencies utilized in the past have been closed.
- Various agencies have attempted to open licensed facilities and all but one has been closed due to various reasons – city ordinance passage, community resistance, etc.

The Problem

- This has created an inability for IDOC and other agencies to secure housing for sex offenders on parole or other types of supervision.
- Just to give you a perspective, IDOC, at any given time, has approximately 1200 offenders who should be on parole, but cannot be released as they have no approved site in which to reside.
- Offenders then eventually discharge from custody with no supervision or treatment requirements.

Discussion/Questions

Statutes to Know:

730 ILCS 150	Sex Offender Registration Act
730 ILCS 152	Sex Offender Community Notification Act
720 ILCS 5	Sex Offenses
720 ILCS 5/11-9.3 & 9.4-1	Restrictions

Contact Info

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Violating at the Door - Case Law
IPDA Fall 2016 Conference

Prepared by Susan Wilham,
Assistant Appellate Defender, Fourth District Office

***Cordrey v. Prisoner Review Board,* 2014 IL 117155.**

Although the Prisoner Review Board sets the conditions for an inmate's MSR, the Department of Corrections is responsible for assisting an inmate with finding a suitable host site for MSR placement. And "the Department of Corrections is directed to *assist* inmates on MSR in finding residential placement, but is not directed to *obtain* residential placement for those inmates."¶ 24.

This issue was not properly brought as a claim for mandamus, as factual questions predominate in this case. ¶ 34.

***Webb v. Robert*, 2013 WL 6698081 (S.D. Ill. Aug. 16, 2013).**

If a plaintiff is still incarcerated as a result of that conviction, the proper method for challenging a wrongfully extended sentence would be habeas corpus after Plaintiff had exhausted his remedies through the Illinois state courts.

***Hughes v. Walker*, 2009 WL 2877081, (C.D. Ill. Sept. 4, 2009).**

A plaintiff cannot use a § 1983 lawsuit to ask the court to release him from prison. A petition for a writ of habeas corpus under 28 U.S.C. § 2254 "is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release."

***U.S. ex rel. Neville v. Ryker*, 2009 WL 230524 (N.D. Ill. Jan. 30, 2009).**

The imposition of electronic monitoring does not unconstitutionally increase a term of incarceration above and beyond the period of incarceration imposed at sentencing, because Illinois law has consistently given the Prisoner Review Board broad discretion to create and impose special conditions on MSR terms to protect the public and rehabilitate offenders. As MSR conditions are not punitive, they cannot violate the ex post facto clause.

***Lucas v. Department of Corrections*, 2012 IL App (4th) 110004.**

After DOC refused to release him on MSR because he was indigent, homeless, and unable to comply with electronic monitoring, Lucas filed a complaint for damages and injunctive relief, alleging that DOC had a duty to locate a residence for him that could accommodate electronic monitoring. The Court found that the PRB was entitled to decide that MSR required electronic monitoring, and DOC had no statutory or regulatory duty to obtain a residential placement for plaintiff that would enable him to comply with the electronic monitoring, although it was required to assist him (and had in this case). Because plaintiff lacked a residence in which electronic monitoring was possible, there could be no MSR until such a residence was found.

***People v. Hughes,* 2012 IL 112817.**

The defendant pleaded guilty to an offense that made him subject to possible commitment under the Sexually Violent Persons Act. He subsequently filed a motion to withdraw his plea, arguing the plea was involuntary because his trial counsel had failed to inform him of the Act. Although the Illinois Supreme Court held that the defendant had failed to establish that he was unaware of the Act at the time he pled guilty, it did find that defense counsel was required by *Padilla v. Kentucky,* 559 U.S. 356 (2010), to inform the defendant of the Act and its consequences for his case.

Illinois
Department of
Corrections

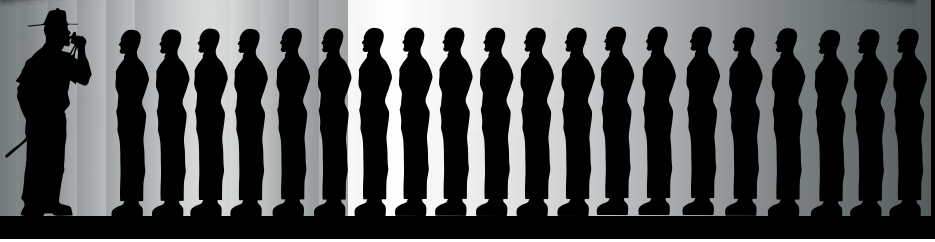
Bruce Rauner
Governor
John R. Baldwin
Director

IMPACT
INCARCERATION PROGRAM

DEVELOPING SELF-ESTEEM & POSITIVE SELF - CONCEPT

MAKING A DIFFERENCE IN THE COMMUNITY

EDUCATION AND TRAINING



WHAT DOES IIP DO?

Impact Incarceration Programs (IIP), are specialized facilities designed to promote lawful behavior and reduce recidivism rates.

The Illinois Department of Corrections currently oversees two Impact Incarceration Programs located at Dixon Springs and Du Quoin.

Dixon Springs IIP, a satellite facility of Vienna Correctional Center, opened October 15, 1990. Located in Pope County, Dixon Springs is a co-ed program with the ability to house a population of 300 male and female participants.

Du Quoin IIP, a satellite facility of Pinckneyville Correctional Center, began operating as a boot camp on August 1, 1994. Located in Perry County, Du Quoin is an all-male facility with the ability to house 300 participants.

IMPACT INCARCERATION PROGRAM

THE IIP PROGRAM AND MISSION

Pursuant to 730 ILCS 5/5-8-1.1(b), eligible offenders sentenced to1-8 years of IDOC Incarceration may be recommended by the sentencing court to be considered by IDOC to be placed in the IIP program, or commonly known as "Boot Camp." The sentencing Court's Recommendation that the offender be considered for the program is required under law. Recommended offenders must pass a mental and medical health review and a security risk assessment to be placed in the program. Offenders approved for placement participate in the program between 120-180 days. Upon successful completion of the program, offenders can satisfy their custody time on their sentence and transition to a term of mandatory supervised release.

The IIP program provides a structured, specialized environment that helps participants develop self-esteem, responsibility and positive self-concept while working to address the underlying issues that often lead to criminal behavior and substance abuse problems.

The programming, coupled with a very structured period of community supervision, is designed to help offenders stay out of prison.

Historically, IIP graduates have been more successful after release than traditional prison exits. Youthful offenders have the characteristics most associated with high recidivism rates. Those with limited work skills, low educational achievement, and substance abuse histories tend to cycle in and out of prison, at least until they "mature" from criminal behavior. However, IIP graduates have always maintained recidivism rates lower than other inmates in the general population of Illinois prisons. Lower recidivism rates can be attributed to multiple program services, opportunities and structure brought into daily planning.

THE IIP PROGRAM AND MISSION

A primary goal of the IIP is to adjust long-term criminal offending behavior, and the IIP has been extremely successful in that regard. Since program inception, the percentage of IIP graduates who have recidivated after committing a new offense has always been lower than that of traditional inmates. Simply put, the IIP has had an impact on reducing crime in Illinois communities as IIP graduates continually outperform inmates released from traditional prison settings.

The Department calculates recidivism based on an offender's return to prison within three years of release. A review of the last 4 study periods shows that an offender is 7.5% less likely to commit a new criminal offense than that of traditional inmates.

IMPACT INCARCERATION PROGRAM

IIP OFFENDER PROGRAMS

Offender classes in the Impact Incarceration Program:

Academic:

- ABE (Adult Basic Education)
- GED (General Education Development)

Vocational:

- Horticulture
- Career Technology
- Commercial, Custodial
- Food Service

Other:

- Parole School
- Religious Volunteers
- Community Service
- TRAC 1
- Career Technologies
- Substance Abuse
- Anger Management
- Individual Counseling

EDUCATION & TRAINING

COMMUNITY ASSISTANCE

Supporting communities through public service projects provides inmates with a structured agenda that develops responsibility, self-discipline, self-respect and a good work ethic. A willingness to get involved in community service enhances their ability to reenter society and live as responsible, law abiding, productive citizens.

The use of staff and inmate work crews assisting in disaster relief projects also serves as a valuable asset to taxpayers, especially those affected by devastating disasters.

Since the flood of 1993, Illinois has utilized offender labor to assist communities that have been affected by natural disasters. The Impact Incarceration Program (IIP) has played a huge role in disaster assistance to affected Illinois communities.

In 2012, Illinois Department of Corrections inmates contributed 99,565 hours of service to communities around the state. IIP plays a key role in this effort and, since 1990, the program has saved municipalities hundreds of thousands of dollars for such services.

The report below outlines a sample of disasters which the Impact Incarceration Program have assisted communities with since 2009.

2009

From February 5, 2009 through March 13, 2009, work crews from the Impact Incarceration Programs assisted the following communities that were severely impacted by a winter ice storm:

Massac County: Metropolis, Brookport, Joppa; Hardin County: Rosiclare, Elizabethtown, Cave-In-Rock; Pope County: Golconda, Eddyville; Pulaski County: Mounds, Mound City, Karnak, Olmsted, New Grand Chain, Perks, Wetaug, Villa Ridge, Pulaski, Meridian School District; Alexander County: Cairo, Urbandale, Klondike, Hodges Park, Unity, Sandusky; Johnson County: Vienna, Belknap, Reevesville, Cypress.

Total Crews: 161 Total Offenders: 1,644 Hours: 9,390

From May 11, 2009 through June 18, 2009, crews from the Impact Incarceration Program assisted the following communities that were severely impacted by an "inland hurricane":

Williamson County: Marion, Herrin, Carterville, Cambria, Crainville, Johnston City, Pittsburgh, Spillertown, Whiteash, Hurst, Bush, Colp; Jackson County: Murphysboro, Carbondale, Carbondale Township, Elkville, Grand Tower; Saline County: Galatia, Harco.

Total Crews: 251 Total Offenders: 2,510 Hours: 20,080

2011

From April 5, 2011 through May 7, 2011, crews from the Impact Incarceration Program assisted the following communities that were severely impacted by flooding:

Hardin County: Rosiclare, Elizabethtown; Gallatin County: Old Shawneetown, Junction, Equality; Alexander County: Cairo, Olive Branch, East Cape Girardeau Union County: Anna.

Total Crews: 53 Total Offenders: 530 Hours: 5,200

Both Dixon Springs and DuQuoin Impact Incarceration Programs provided flood relief at their respective facilities during this flood disaster. The filled bags assisted the communities of Rosiclare, Elizabethtown, Old Shawneetown, Junction, Equality, Metropolis, Cairo, Olive Branch, East Cape Girardeau, Urbandale, Mounds City, Karnak, Herrin and various other locations in Massac County, Alexander County, Pulaski County, Hardin County, White County, Jackson County, and Gallatin County.

Total Offenders: 7,230 Sandbags Filled: 304,175 Hours: 57,840

From June 23, 2011 through June 28, 2011, the Impact Incarceration Program assisted the city of Benton with debris removal following a tornado that affected the community.

Total Crews: 4 Total Offenders: 40 Hours: 240

IIP GRADUATION

Offenders assigned to the IIP satisfy their custody time on their sentence upon completion of the 120-180 day program. Some offenders may take longer than 120 days to complete the program due to rule violations or days spent away from the program. Upon completion of the program, offenders will serve the required amount of parole supervision time, based on the class of the offense. Offenders who parole after completion of the program are subject to close supervision by the Department's parole division. If the offender is found to violate their parole conditions, time can be revoked on their sentence by the Prisoner Review Board, requiring them to serve more custodial time on their sentence.

PRAISE FOR THE IIP PROGRAM

"Thank you for all your landscape work on our community ballfields. We appreciate your past and continued support and assistance."

-Du Quoin Church League

"Our clients very much enjoyed the produce you donated, your kindness is appreciated."

-Gold Plate Program

"Thank you for sending your bootcampers to help us in the Relay for Life. Centralia raised more than $140,000 to fight cancer. Thanks Again!."

-Jamie, Relay For Life

"I have learned through the past 2 years of IIP and probation classes that I am a better mother, daughter, sister and friend... I thank everyone that was involved in the changes in me."

-Amanda Lindsey, IIP Graduate

"I want to thank IIP for teaching me about my wrongdoing, breaking me down and building me back up to be a strong young lady. The skills and discipline I have learned here will be used in the world."

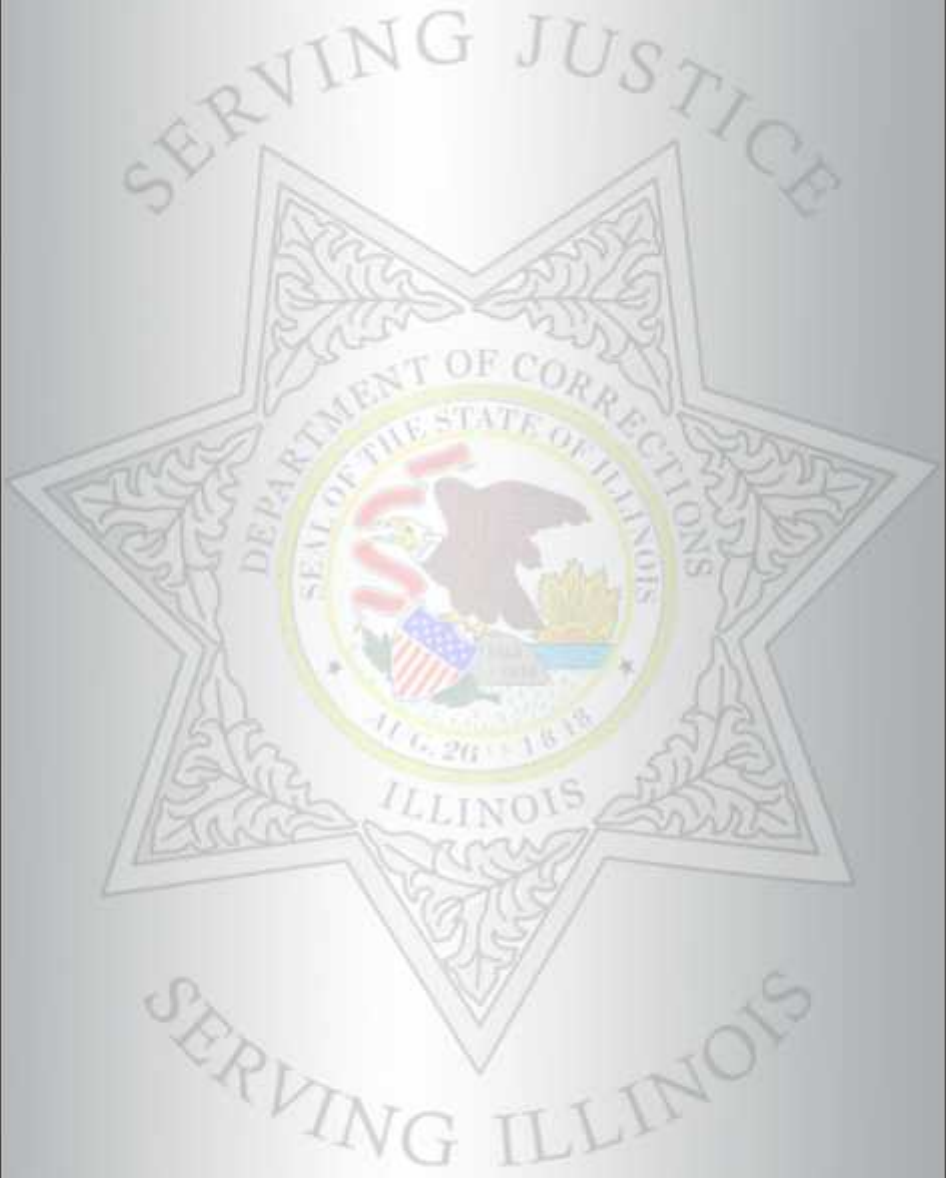
-Inmate Green, IIP Graduate

"When I got to the boot camp I was at my lowest point, but because of your help I have turned my life around."

-Jonathan Obermier, IIP Graduate

Illinois Department of Corrections

Impact Incarceration Program


SERVING JUSTICE
DEPARTMENT OF CORRECTIONS
SEAL OF THE STATE OF ILLINOIS
ILLINOIS
SERVING ILLINOIS

LEGISLATION 2016 – OUTLINE SUMMARY #A
99th General Assembly

LIVE BILLS
CRIMINAL, TRAFFIC & JUVENILE

Steve Baker
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Legislative Liaison
Law Office of the Cook County Public Defender

Last update: 8-26-16

*denotes an immediate effective date
VS = possible consideration during veto session Nov/Dec 2016

a. New Offenses
b. Amendment to Existing Offenses
c. Criminal Procedure
d. Code of Corrections
e. Crime Victims
f. Domestic Violence
g. Drugs
h. Juvenile [delinquency & abuse]
i. Animals
j. Sex Offenders
k. Vehicle Code
l. Firearms
m. Omnibus
n. Public Health
o. Miscellanea
p. Reentry Issues

Full text and bill status can be found at http://www.ilga.gov

A. NEW OFFENSES — Status:

SB1120	Theft Rental Prop >$500	P.A. 99-534, eff. 1-1-17

B. AMENDMENT TO EXISTING OFFENSES

*SB2167	False Personation $	P.A. 99-561, eff. 7-15-16
SB2907	Property Damage – Felony $ Amount	P.A. 99-631, eff. 1-1-17
*SB2947	EMS Definition	P.A. 99-816, eff. 8-15-16
HB6010	Vehicular Endanger – Bldg	P.A. 99-656, eff. 1-1-17

C. CRIMINAL PROCEDURE

*SB392	Burge Torture Comm Expand	P.A. 99-688, eff. 7-29-16
SB2252	Bail – Mandate Accept Cash	P.A. 99-618, eff. 1-1-17
SB2343	Cell Site Simulator Device – Use	P.A. 99-622, eff. 1-1-17
SB2370	Juv – Death/Sex Interrogat; Attorney	P.A. 99-882, eff. 1-1-17
SB2875	Cell Location - Authorize via AV	P.A. 99-798, eff. 1-1-17
SB2876	Money Laundering – Joinder	P.A. 99-629, eff. 1-1-17
SB2880	Victim Testimony via AV: Dev Disabled	P.A. 99-630, eff. 1-1-17
SB2885	Conviction Reversal - $ Refund	P.A. 99-883, eff. 1-1-17
SB3106	115-10 Hrng – Intellectual Disabled	P.A. 99-752, eff. 1-1-17
HB2569	Plea Admonition; Collat Consequence	P.A. 99-871, eff. 1-1-17
HB4683	Appeal – Defendant's Death	P.A. 99-778, eff. 1-1-17
*HB5613	Task Force – Criminal Discovery	P.A. 99-874, eff. 8-22-16
*HB5805	Stat of Lim – Senior Theft	P.A. 99-820, eff. 8-15-16
HB6190	Accel Res Court – Extend	P.A. 99-724, eff. 1-1-17

D. CODE OF CORRECTIONS

*SB2282	MSR Condition – Associate w/	P.A. 99-698, eff. 7-29-16
SB2465	Repeal IDOC Cost Reimburse$	Pass both; Am Veto
*SB2870	Probation – EM, Drugs & Alcohol $	P.A. 99-797, eff. 8-12-16
SB3164	Judicial – Probationable Offense; SPAC	P.A. 99-861, eff. 1-1-17
*HB4326	Hardin Cty Work Camp	Pass both; Veto
HB5003	Veteran's Courts – Multi County	P.A. 99-807, eff. 1-1-18
HB5104	IDOC Medical & M/H Employees#	Pass both; Am Veto
HB5771	LWOP Minors – Sex Crimes No	P.A. 99-875, eff. 1-1-17
*HB6037	Mitigation – Mental Illness	P.A. 99-877, eff. 8-22-16

E. CRIME VICTIMS

SB2286	Trafficking Notice – Hotels	P.A. 99-565, eff. 7-1-17
*SB3007	Public Aid – Trafficking Victims	P.A. 99-870, eff. 8-22-16
SB3096	Sex Crime - Protocol; ISP Toxicology	P.A. 99-801, eff. 1-1-17
*HB2822	Human Traffick TF	P.A. 99-864, eff. 8-22-16
HB4036	Victim Econ Security – Employers	P.A. 99-765, eff. 1-1-17
HB5472	Victim & Witness Acts	P.A. 99-671, eff. 1-1-17

F. DOMESTIC VIOLENCE

HB4264	Barber/Cosmetology – Education	P.A. 99-766, eff. 1-1-17
HB5538	DV – Police Training	P.A. 99-810, eff. 1-1-17
HB6109	OOP E-filing- Sup Ct Pilot	P.A. 99-718, eff. 1-1-17

G. DRUGS

SB10	Medical Cannabis –conditions +	P.A. 99-519, eff. 6-30-16
SB210	Bath Salts – Reckless Sale	P.A. 99-585, eff. 1-1-17
SB211	OAF $ - Copy Evidence	P.A. 99-685, eff. 1-1-17
*SB212	Drug Forfeitures – Use	P.A. 99-686, eff. 7-29-16
*SB2228	Cannabis Penalty; DUI[501a6]	P.A. 99-697, eff. 7-29-16
SB2601	TASC Probation – Mot to Vacate	P.A. 99-574, eff. 1-1-17
*SB2989	Liquor Transport – Comm Carrier	P.A. 99-904, eff. 8-26-16 &
HB5593	Opioid Addiction Education	P.A. 99-553, eff. 1-1-17
HB5594	Drug Court – Opioid Treatment	P.A. 99-554, eff. 1-1-17
HB5781	Drug Disposal – Deceased	P.A. 99-648, eff. 1-1-17

H. JUVENILE LAW (Abuse & Delinquency)

SB320	Youth Diversion Taskforce	P.A. 99-894, eff. 1-1-17
SB2512	Juv Ct – Info re Relatives	P.A. 99-625, eff. 1-1-17
SB2524	DCFS Youth ID Card – No Fee	P.A. 99-659, eff. 1-1-17
SB2777	DJJ Parole Condition & Revoke	P.A. 99-628, eff. 1-1-17
HB114	DJJ – Critical Incident Report	P.A. 99-664, eff. 1-1-17
HB4425	DCFS-Abse Rpt; in Military	P.A. 99-638, eff. 1-1-17
HB4447	Parentage Act	P.A. 99-769, eff. 1-1-17
HB5017	Expunge Non-Adjud; Misd's	P.A. 99-835, eff. 1-1-17
HB5551	DCFS – Fictive Kin	P.A. 99-836, eff. 1-1-17
HB5656	DHFS – Grandparent Visitation	P.A. 99-838, eff. 1-1-17
*HB5665	DCFS – Foster Child – Activities	P.A. 99-839, eff. 8-19-16
HB6291	Juvenile Probation Length	P.A. 99-879, eff. 1-1-17

I. ANIMALS

SB3129	Police Dog Retirement	P.A. 99-817, eff. 1-1-17
*HB5010	Animal Abuse – Exposure	P.A. 99-782, eff. 8-12-16
Cook Ord	Animal Abuse Registry	Ch 46; 46-38 to -45 Eff. 1-1-17

J. SEX OFFENDERS

*SB2221	Assault – DNA Testing Protocol	P.A. 99-617, eff. 7-22-16
SB3354	SORA Regis Site – Chicago	P.A. 99-755, eff. 8-5-16
HB5572	SORA Task Force	P.A. 99-873, eff. 1-1-17
HB1127	Stat of Lim; various sex offenses	Pass House; VS
HB1128	Stat of Lim; various sex offenses	Pass House; VS
HB1129	Stat of Lim; various sex offenses	Pass House: VS

K. VEHICLE CODE

SB629	IVC Commercial Veh AV	P.A. 99-689, eff. 1-1-17
SB637	Real ID Act – Federal Compliance	P.A. 99-0511, eff. 1-1-17
*SB2173	SOS – Veteran's ID & License	P.A. 99-544, eff. 7-15-16
*SB2261	Relocat Tow Comm; Solicit	P.A. 99-848, eff. 8-19-16
*SB2567	Vehicle Insur – SOS May Verify	P.A. 99-737, eff. 8-5-16
SB2806	Rail Signal Crossing	P.A. 99-663, eff. 1-1-17
SB2835	Highway – Public School Road	P.A. 99-740, eff. 1-1-17
*SB2974	Cert of Title & Registrat Fee	P.A. 99-707, eff. 7-29-16
*SB3018	Truck Glider Titling	P.A. 99-748, eff. 8-5-16
HB4105	Blue Dot Tail Lights – Motorcycle	P.A. 99-598, eff. 1-1-17
*HB4334	Vehicle Registration Renewal	P.A. 99-887, eff. 8-25-16
*HB4369	Boat Racing Cert & Insure	P.A. 99-526, eff. 7-8-16
HB4387	Pilot License Registration	P.A. 99-605, eff. 1-1-17
*HB4445	SOS Miscellany	P.A. 99-607, eff. 7-22-16
HB5402	License Plate Special Renewal	P.A. 99-809, eff. 1-1-17
HB5651	Veh Reg Expire Birthday	P.A. 99-644, eff. 1-1-17
HB5723	No Insur – Petty Offense	P.A. 99-613, eff. 1-1-17
HB5912	Bicycles – Right of Way	P.A. 99-785, eff. 1-1-17
HB6006	Disabled Vehicle – Move over	P.A. 99-681, eff. 1-1-17
*HB6093	Auto Transporter – Length	P.A. 99-717, eff. 8-5-16

HB6131	Driver Ed – Stop Protocol	P.A. 99-720, eff. 1-1-17

L. FIREARMS

SB2213	FOID – Mental Dis Note to ISP	P.A. 99-696, eff. 7-29-16
SB3441	Pen Enhancement – AUUW (shell)	Sen Assigns; VS
*HB6303	Creates Firearm Trafficking	P.A. 99-885, eff. 8-23-16
HB6331	FOID Revoke – Order of Protection	P.A. 99-787, eff. 1-1-17

M. OMNIBUS

*HB5540	First 2016 General Revisory	P.A. 99-642, eff. 7-28-16

N. PUBLIC HEALTH & MENTAL HEALTH

SB2459	MHDDC – Video Hearing	P.A. 99-535, eff. 1-1-17

O. MISCELLANY

SB2767	Cnty Cd – Private Tax Sale Enforce	Pass both; VETO
SB2833	Cnty Cd – Enforce Judgments	P.A. 99-739, eff. 1-1-17
SB2861	IL Code of Military Justice	P.A. 99-796, eff. 1-1-17
*SB3034	Donate Jury Fee – Pilot Pgrm	P.A. 99-583, eff. 7-15-16
SB3112	FOIA – Persons in Custody	Pass both/MTR
SB3162	Civil Pro – E-File Fee	P.A. 99-859, eff. 8-19-16
SB3284	Cnty Cd – Admin Adj; IGA w/ muni	P.A. 99-754, eff. 1-1-17
HR1072	Celebrates Miranda v. Arizonia	Adopted House
HB1437	Diversion Racial Impact Data	P.A. 99-666, eff. 1-1-17
HB3363	Recycle Metal TF – add member	P.A. 99-760, eff. 1-1-17
*HB4552	Aging Abuse – Records Access	P.A. 99-546, eff. 1-1-17
*HB4603	Public Defender Report < 3 Mil; CB vote	P.A. 99-774, eff. 8-12-16
HB4715	FOIA; $ Prevailing Party	P.A. 99-586, eff. 1-1-17
HB4999	Work Privacy – Social Media	P.A. 99-610, eff. 1-1-17
*HB5808	Drone Taskforce – IDOC	P.A. 99-649, eff. 7-28-16
*HB5910	Fed Law Enforce Agency List	P.A. 99-651, eff. 7-28-16
*HB6167	Suffrage Rights at 17	P.A. 99-722, eff. 8-5-16
*HB6324	SPAC to Assist	P.A. 99-880, eff. 8-22-16
*HB6325	SPAC Members Judicial	P.A. 99-533, eff. 7-8-16

P. REENTRY ISSUES

SB42	Health Care Licensing	P.A. 99-886, eff. 1-1-17

*SB3005	Park Dist – Crim Backgrnd Check	P.A. 99-884, eff. 8-22-16
*HB4360	Sch Cd = Educator Disqualification	P.A. 99-667, eff. 7-29-16
*HB4391	Twp Office Eligible – No felony	P.A. 99-546, eff. 7-15-16
*HB4515	Health Care Worker Registry – Waiver	P.A. 99-872, eff. 1-1-17
HB4562	Human Rights Act – Real Estate	P.A. 99-548, eff. 1-1-17
HB5973	Occupational License – Conviction	P.A. 99-876, eff. 1-1-17
HB6200	IDOC Inmate Phone call – Fee	P.A. 99-878, eff. 1-1-17
HB6328	Early Expungement & Sealing	P.A. 99-881, eff. 1-1-17

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From: Steve Baker, CCPDO; 312-603-0720; stephen.baker@cookcountyil.gov

To:

2016 Legislation Alive
Update 8/26/16

i. Senate bills
ii. House bills

*denotes immediate effective date
VS=Nov/December 2016 veto session

Reliance should be had only upon review of the Public Act http://www.ilga.gov/

Senate Bills

*SB10
Short Description: MEDICAL CANNABIS PILOT PROGRAM MODIFICATIONS
Status: P.A. 99-519, eff. 6-30-16
410 ILCS 130/5 etc.

Summary:
Amends the Medical Cannabis Pilot Program Act. Adds definition of lawful user not considered an addict. Expands definition of "debilitating medical condition" to include PTSD and a terminal illness with a diagnosis of 6 months or less. Adds to excluded offenses for cultivation or dispensing agents/patient or caregiver a felony violation of Cannabis or Methamphetamine Control Acts, unless waived by the registering department ("reasonable amount of cannabis intended for medical use"). Modifies medical certification language to delete therapeutic benefit language. Provides DPH shall accept petitions for additional medical conditions during a one-month period per year. Medical Advisory Board to be reconstituted, with selection by the Governor. DPH to update Prescription Monitoring Program upon registration or removal. Registry cards valid for 3 years (now 1). Repeal date extended to July 1, 2020. Immediate effective date.

SB42
Short Description: HEALTH CARE LICENSING – Conviction time bar
Status: P.A. 99-886, eff. 1-1-17
20 ILCS 2105/2105-165 225 ILCS 46/multi

Summary
Amends the Health Care Worker Background Check Act. Provides an opportunity to restore a revoked health care license on account of a forcible felony conviction, except those requiring registration under the Sex Offender Registration Act and a conviction for involuntary sexual servitude of a minor. Such a

person with a forcible felony conviction can petition to have their license restored following a wait period of 5 years since conviction or 3 years since completion of sentence. It also lists a number of factors that IDFPR should consider in these cases.(Currently a forcible felony conviction operates as a lifetime bar even when an applicant may, in IDFPR's view, be qualified to be licensed).

SB210
Short Description: BATH SALTS
Status: P.A. 99-585, eff. 1-1-17
New Act 720 ILCS 570/401

Summary
Creates the Bath Salts Prohibition Act. Provides that a person may not sell or offer for sale any bath salts in a retail mercantile establishment located within this State (*reckless mens rea*?). Provides that a violation is a Class 3 felony for which a fine not exceeding $150,000 may be imposed. Provides that in addition to any other penalty that may be imposed for a conviction under the Act, the unit of local government that issued a retailer's license for the retail mercantile establishment whose merchant violated the Act may revoke the retailer's license of that retail mercantile establishment. Defines "bath salts" as any synthetic or natural material containing any quantity of a cathinone chemical structure, including any analogs, salts, isomers, or salts of isomers of any synthetic or natural material containing a cathinone chemical structure. Provides that this includes, but is not limited to, *synthetic cathinones* as defined in the Illinois Controlled Substances Act, and any related "controlled substance analog" as defined in the Illinois Controlled Substances Act, regardless of how the product is labeled or marketed. Amends the Illinois Controlled Substances Act. Exempts from a violation of knowingly manufacturing or delivering, or possessing with intent to manufacture or deliver, a controlled substance, the sale or offering for sale of bath salts in a retail mercantile establishment.

Comment: response to AM-2201 “potpourri” conviction “knowing” reversal in People v. Chatha, 2015 IL App (4th) 130652. As no mental state specified, arguable reckless mental state required per 720 ILCS 5/4-3, /4-9.

SB211
Short Description: CRIMINAL PRO - OAF$ COPIES
Status: P.A. 99-686, eff. 1-1-17
725 ILCS 5/115-9.2 new

Summary
Amends the Code of Criminal Procedure of 1963. Provides that in a prosecution in which United States currency was used by a law enforcement officer or agency or by a person acting under the direction of a law enforcement officer or agency in an undercover investigation of an offense that has imprisonment as an available sentence for a violation of the offense, the court shall receive as competent evidence, a photograph, photostatic copy, or photocopy of the currency used in the undercover investigation, if the photograph, photostatic copy, or photocopy (1) will serve the purpose of demonstrating the nature of the currency; (2) the individual serial numbers of the currency are clearly visible or if the amount of currency exceeds $500 the individual serial numbers of a sample of 10% of the currency are clearly visible, and any identification marks placed on the currency by law enforcement as part of the investigation are clearly visible; (3) complies with federal law, rule, or regulation requirements on photographs, photostatic copies, or photocopies of United States currency; and (4) is otherwise

admissible into evidence under all other rules of law governing the admissibility of photographs, photostatic copies, or photocopies into evidence. Provides that the fact that it is impractical to introduce into evidence the actual currency for any reason, including its size, weight, or unavailability, need not be established for the court to find a photograph, photostatic copy, or photocopy of that currency to be competent evidence. Provides that if a photograph, photostatic copy, or photocopy is found to be competent evidence, it is admissible into evidence in place of the currency and to the same extent as the currency itself.

*SB212
Short Description: FORFEITURE $ USE
Status: P.A. 99-686, eff. 7-20-16
720 ILCS 550/12 720 ILCS 570/505 720 ILCS 646/85 725 ILCS 175/5

Summary
Amends the Cannabis Control Act, the Illinois Controlled Substances Act, the Methamphetamine Control and Community Protection Act, and the Narcotics Profit Forfeiture Act. Provides that all moneys and the sale proceeds of all other property forfeited and seized under these Acts may be used for public education in the community or schools in the prevention or detection of the abuse of drugs or alcohol. Immediate effective date.

SB320
Short Description: YOUTH DIVERSION TASKFORCE
Status: P.A. 99-894, eff. 1-1-17
New Act

Summary
Creates the Mental Health Opportunities for Youth Diversion Task Force Act. Creates the Opportunities for Youth Diversion Task Force within the Department of Human Services. Provides that the members of the Task Force shall serve without compensation and are responsible for the cost of all reasonable and necessary travel expenses connected to Task Force business. Provides that the Task Force members shall not be reimbursed by the State for these costs. Provides that the Task force shall: (1) develop an action plan for State and local law enforcement and other agencies to divert youth in contact with law enforcement agencies that require mental health treatment into the appropriate health care setting rather than initial or further involvement in the juvenile justice system; (2) review existing evidence based models and best practices around diversion opportunities for youth with mental health needs from the point of police contact and initial contact with the juvenile justice system; (3) identify existing diversion programs across this State and highlight implemented programs demonstrating positive evidence based outcomes; (4) identify all funding sources which can be used towards improving diversion outcomes for youth with mental health needs, including funds controlled by the State, funds controlled by counties, and funding within the health care system; (5) identify barriers to the implementation of evidence based diversion models and develop sustainable policies and programs to address these barriers; (6) recommend an action plan that includes pilot programs and policy changes based on the research required by these provisions for increasing the number of youth diverted into community based mental health treatment rather than further engagement with the juvenile justice system; and (7) complete and deliver the action plan with recommendations to the Governor and General Assembly within one year of their first meeting. Provides that upon the completion and delivery

of the action plan to the Governor and General Assembly, the Task Force shall be dissolved. Repeals the Act on December 31, 2018.

Comment: PD juvenile defender member selected by House Minority leader.

SB392
Short Description: BURGE COMM – EXPAND
Status: P.A. 99-688, eff. 7-29-16
775 ILCS 40/35

Summary
Amends the Illinois Torture Inquiry and Relief Commission Act. Provides that "claim of torture" includes torture occurring within a county of more than 3,000,000 inhabitants (instead of torture allegedly committed by Commander Jon Burge or any officer under the supervision of Jon Burge). Provides that the powers and duties of the Illinois Torture Inquiry and Relief Commission include conducting inquiries into claims of torture (instead of "inquiries into claims of torture, with priority to be given to those cases in which the convicted person is currently incarcerated solely for the crime to which he or she claims torture by Jon Burge or officers under his command, or both"). Provides that the Act applies to claims of torture filed not later than 10 (instead of 5) years after the effective date of the Act. Effective immediately.

Comment: Response to People v. Allen, 2016 IL App (1st) 142125 Affirmed.
Illinois Torture Inquiry and Relief Commission Ac does not provide relief to a petitioner who alleges that his conviction resulted from evidence which was physically coerced at the hands of police officers other than former Chicago police commander Jon Burge or his subordinates. Explicit language of the Act limits its application only to petitioners who were victims of Burge or his subordinates.

SB629
Short Description: IVC COMMERCIAL EVENT RECORDER
Status: P.A. 99-689, eff. 1-1-17
625 ILCS 5/1-218.10 new 625 ILCS 5/12-604.1 625 ILCS 5/12-604.3 new

Summary
Amends the Illinois Vehicle Code. Provides that a person may operate a video event recorder in a contract carrier vehicle. Provides that a contract carrier vehicle carrying passengers that is equipped with a video event recorder shall have a notice posted in a visible location stating that a passenger's conversation may be recorded. Provides that any data recorded by a video event recorder shall be the sole property of the registered owner or lessee of the contract carrier vehicle. Defines "video event recorder".

SB637
Short Description: REAL ID ACT FEDERAL COMPLIANCE
Status: P.A. 99-0511, eff. 1-1-17
15 ILCS 335 multi 625 ILCS 5/6-103 625 ILCS 5/6-106

Summary
Amends the Illinois Identification Card Act. Provides that beginning July 1, 2017, the Secretary of State shall refuse to issue any identification card to any person who has been issued a driver's license under the Illinois Vehicle Code. Provides that any person may surrender his or her driver's license in order to become eligible to obtain an identification card. Provides that beginning July 1, 2017, all applicants for standard Illinois Identification Cards and Illinois Person with a Disability Identification Cards shall provide proof of lawful status in the United States. Provides that applicants who are unable to provide the Secretary with proof of lawful status are ineligible for identification cards. Provides further criteria for the expiration of Illinois Identification Cards and Illinois Person with a Disability Identification Cards. Amends the Illinois Vehicle Code to make similar changes concerning Illinois driver's licenses, except that driver's license applicants who are unable to provide proof of lawful status in the United States may apply for a temporary visitor's driver's license.

Comment: Beginning next year, a resident cannot get both an Illinois ID & DL. Temporary documents will be given out at the SOS facility. Permanent IDs and DLs will be produced in a secure facility and mailed out.

SB1120
Short Description: THEFT OF RENTAL PROPERTY > $500
Status: P.A. 99-534, eff. 1-1-17
720 ILCS 5/16-3

Summary
Amends the Criminal Code of 2012. Includes in the theft of rental property renting or leasing equipment exceeding $500 in value including tools, construction or industry equipment, and such items as linens, tableware, tents, tables, chairs and other equipment specially rented for a party or special event. Allows the trier of fact to infer evidence that the person is without good cause for failure to return the property if the person signs the agreement with a name or address other than his or her own. Provides that in addition to any other penalty imposed, the court may order a person convicted of the offense to make restitution to the victim of the offense.

Comment: As a penalty increase, ex post facto limitation mandates an offense date of 1-1-7 or later.

*SB2167
Short Description: CRIM CD-FALSE PERSONATION
Status: P.A. 99-561, eff. 7-15-16
720 ILCS 5/17-2

Synopsis As Introduced
Amends the Criminal Code of 2012. Provides that a person also commits a false personation when he or she knowingly and falsely represents himself or herself to be: (1) an active-duty member of the Armed Services or Reserve Forces of the United States or the National Guard or a veteran of the Armed Services or Reserve Forces of the United States or the National Guard; and (2) obtains money, property, or another tangible benefit through that false representation. Provides that a violation is a petty offense for which the offender shall be fined at least $100 and not more than $200. Effective immediately.

Comment : Federal version (w/o acquisition of $) held unconstitutional in U.S. v. Alvarez, No. 11-210 (2012 SCOTUS).
Is there a proportionate challenge available for theft by deception if so charged?
By analogy, see theft by deception/theft by unauthorized control analysis in People v. Graves, 207 Ill. 2d 478, 483-485 (Ill. 2003). Held: "unauthorized" theft does not contain the same elements as theft by deception.

SB2173
Short Description: SOS-VETERAN ID AND LICENSE
Status: P.A. 99-544, eff. 7-15-16
15 ILCS 335/5 625 ILCS 5/6-106

Synopsis As Introduced
Amends the Illinois Identification Card Act and the Illinois Vehicle Code. Provides that the Illinois Department of Veterans' Affairs shall advise the Secretary of State as to what other forms of proof of a person's status as a veteran are acceptable. Allows the issuance of an identification card or a driver's license with a veteran designation to a member of the armed forces, including a member of any reserve component or National Guard unit, regardless of whether he or she served on active duty. Makes conforming changes. Effective immediately.

*SB2213
Short Description: FOID CARD-MENTAL DISABILITY
Status: P.A. 99-696, eff. 7-29-16
430 ILCS 65/8.1

Summary
Amends the Firearm Owners Identification Card Act. Provides that beginning July 1, 2016, and each July 1 and December 30 of every year thereafter, the circuit court clerk shall, in the form and manner prescribed by the Department of State Police, notify the Department of State Police, Firearm Owner's Identification (FOID) department if the court has not directed the circuit court clerk to notify the Department of State Police, Firearm Owner's Identification (FOID) Department within the preceding 6 months, because no person has been adjudicated as a person with a mental disability by the court or if no person has been involuntarily admitted. Provides that the Supreme Court may adopt any orders or rules necessary to identify the persons who shall be reported to the Department of State Police under this provision, or any other orders or rules necessary to implement the requirements of the Act. Effective immediately.

*SB2221
Short Description: SEXUAL ASSAULT DNA TESTING
Status: P.A. 99-617, eff. 7-22-16
725 ILCS 202/15 725 ILCS 202/20 725 ILCS 202/42 new

Summary
Amends the Sexual Assault Evidence Submission Act. Provides if a consistent DNA profile has been identified in a sexual assault case by comparing the submitted sexual assault evidence with a known standard from a suspect or with DNA profiles in the CODIS database, the Department of State Police

shall notify the investigating law enforcement agency of the results in writing, and the Department shall provide an automatic courtesy copy of the written notification to the appropriate State's Attorney's Office for tracking and further action, as necessary. Beginning June 1, 2016 or on and after the effective date of this amendatory Act, whichever is later, each law enforcement agency must conduct an annual inventory of all sexual assault cases in the custody of the law enforcement agency and provide written notice of its annual findings to the State's Attorney's Office having jurisdiction to ensure sexual assault cases are being submitted as provided by law. Beginning January 1, 2017 and each year thereafter, the Department of State Police shall publish a quarterly report on its website, indicating a breakdown of the number of sexual assault case submissions from every law enforcement agency. Effective immediately.

*SB2228
Short Description: CANNABIS-PENALTIES; DUI
Status: P.A. 99-697, eff. 7-29-16

20 ILCS 2630/5.2 410 ILCS 130/65 620 ILCS 5/43d 620 ILCS 5/43e
625 ILCS 5/multi 705 ILCS 405/5-125 720 ILCS multi 725 ILCS 5/115-15
725 ILCS 5/115-23 new 730 ILCS 5/5-9-1.9

Synopsis As Introduced
Amends the Cannabis Control Act. Provides that the possession of 10 grams or less of cannabis is a civil law violation punishable by a minimum fine of $100 and a maximum fine of $200. Creates the offense of unlawful use of cannabis-based product manufacturing equipment. Provides that a violation is a Class 2 felony. Provides that the provisions of any ordinance enacted by any municipality or unit of local government which imposes a fine upon cannabis other than as defined in the Cannabis Control Act are not invalidated or affected by this Act. Amends the Drug Paraphernalia Control Act. Provides that if a person is convicted of 10 grams or less of cannabis, the penalty for possession of any drug paraphernalia seized during the arrest for that offense shall be a civil law violation punishable by a minimum fine of $100 and a maximum fine of $200. Provides for distribution of these fines.
Amends Illinois Vehicle Code. Provides that a person shall not drive or be in actual physical control of any vehicle, snowmobile, or watercraft within this State when the person has, within 2 hours thereof, a tetrahydrocannabinol (THC) concentration in the person's whole blood or other bodily substance of 5 nanograms or more of delta-9-tetrahydrocannabinol per milliliter of whole blood or 10 nanograms or more of delta-9-tetrahydrocannabinol per milliliter of other bodily substance from the unlawful consumption of cannabis (rather than a cannabis THC concentration in any amount). Amends various other Acts to make conforming changes. Effective immediately.

Comments: Uses AV language from last year's HB218. Applicability to pending cases? 11-501a6 DUI's maybe not as a substantive change. Caveney v. Bower, 207 Ill.2d 82 (2003); People v. Campbell, 2016 IL App (1st) 101573-B. People v. Glisson, Docket No. 92482 , SUPREME COURT OF ILLINOIS, 202 Ill. 2d 499; 782 N.E.2d 251; 2002 Ill. LEXIS 963; 270 Ill. Dec. 57, December 5, 2002, Opinion Filed , On remand at People v. Glisson, 2005 Ill. App. LEXIS 892 (Ill. App. Ct. 5th Dist., Aug. 24, 2005)
OVERVIEW: Appellate Court of Illinois erred by vacating defendant's conviction for chemical breakdown of an illicit controlled substance after state legislature reorganized statute which criminalized possession of methamphetamine manufacturing chemicals.
But the cannabis decrim probably benefits pending misdemeanor cases (5 ILCS 70/4).

SB2252
Short Description: CRIM PRO-BAIL-ACCEPTING CASH

Status: P.A. 99-628, eff. 1-1-17
725 ILCS 5/110-9

Synopsis As Introduced
Amends the Code of Criminal Procedure of 1963. Provides that a peace officer taking cash bail or bail deposits shall accept payments made in the form of currency, and may accept other forms of payment as authorized by the sheriff. Defines "currency".

Comment: Why is this needed given SCR501 definition? Because Winnebago jail credit card machine was inoperative, and they initially refused to accept cash.

*SB2261
Short Description: IMPOUND VEH -ADMIN FEE
Status: P.A. 99-848, eff. 8-19-16
New Act 625 ILCS 5/11-208.7 625 ILCS 5/11-1431

Summary
Amends the Statewide Relocation Towing Licensure Commission Act. Maintains the appointment procedures for the members of the Commission and the Commission's meeting requirements. The Illinois Commerce Commission shall provide administrative and other support to the Commission. Provides that the Commission, no later than January 1, 2017, shall submit a report to the Governor and to the General Assembly evaluating the current towing laws of this State and providing recommendations for a towing program. Said report shall include a review of all potential litigation costs for an owner of an impounded vehicle, a towing company, and a county or municipality.

Amends the Illinois Vehicle Code. Maintains existing list of offenses for which vehicle impound is authorized. Provides that a tower who stops at the scene of an accident for the purpose of soliciting and has not been called to the location by a law enforcement officer, the Department of Transportation, the State Toll Highway Authority, a local agency having jurisdiction over the highway, or the owner or operator of the damaged or disabled vehicle, or his or her automobile insurer or motor club, shall be guilty of a Class 4 felony (rather than a business offense). Provides that a vehicle owner, or his or her automobile insurer, may bring a claim against a commercial safety vehicle relocator who fails to comply with the requirements for the towing of a vehicle, and a court may award the prevailing party reasonable attorney's fees, costs, and expenses.
Adds provision that “if the administrative hearing officer finds that a county or municipality that impounds a vehicle exceeded its authority under this Code, the county or municipality shall be liable to the registered owner or lessee of the vehicle for the cost of storage fees and reasonable attorney’s fees.” Exempts some home rule ordinance operations.. Effective immediately.

*SB2282
Short Description: CD CORR-CONDITIONS-MSR
Status: P.A. 99-698, eff. 7-29-16
730 ILCS 5/3-3-7

Summary

Amends the Unified Code of Corrections. Provides that the condition of parole, aftercare release, or mandatory supervised release that the subject not knowingly associate with other persons on parole, aftercare release, or mandatory supervised release without prior written permission of his or her parole agent or aftercare specialist does not apply when the association involves activities related to community programs, worship services, volunteering, and engaging families. Effective immediately.

SB2286
Short Description: TRAFFICKING NOTICE - HOTELS
Status: P.A. 99-565, eff. 7-1-17
775 ILCS 50/5 775 ILCS 50/15

Summary
Amends the Human Trafficking Resource Center Notice Act. Provides that the notice required to be posted under the Act shall be posted, among other places, within hotels and motels in clear view of the employees where similar notices are customarily posted. Provides that upon request, the Department of Human Services shall furnish copies of the model notice without charge to the owner of a hotel or motel. Effective July 1, 2017.

SB2343
Short Description: CELL SITE SIMULATOR DEVICE-USE (Stingray)
Status: P.A. 99-622, eff. 1-1-17
New Act

Summary
Creates the Citizen Privacy Protection Act. Provides that a law enforcement agency may not use a cell site simulator device, except to locate or track the location of a communications device or to identify a communications device. Except as provided in the Freedom From Location Surveillance Act, a court order based on probable cause that a person whose location information is sought has committed, is committing, or is about to commit a crime, is required for any permitted use of a cell site simulator device. Provides that an application for a court order to use a cell site simulator device, including an emergency application under the Freedom From Location Surveillance Act, must include a description of the nature and capabilities of the cell site simulator device to be used and the manner and method of its deployment, including whether the cell site simulator device will obtain data from non-target communications devices. Provides that an application for a court order to use a cell site simulator device, including an emergency application under the Freedom From Location Surveillance Act, must also include a description of the procedures that will be followed to protect the privacy of non-targets of the investigation, including the deletion of data obtained from non-target communications devices, absent a judicial preservation order.
Provides that if the court finds by a preponderance of the evidence that a law enforcement agency used a cell site simulator to gather information in violation of the limits in the Act, then the information shall be presumed to be inadmissible in any judicial or administrative proceeding, subject to the State proving a judicially recognized exception to the exclusionary rule.. Defines "cell site simulator device", "communications device", and "law enforcement agency".

Comment: USDOJ requires warrant for use of “stingrays”: Department of Justice Policy Guidance: Use of Cell-Site Simulators 3 (2015), https://www.justice.gov/opa/file/767321/download

Cases finding a reasonable expectation of privacy that cellphone won't be used as a tracking device. State v. Andrews, 227 Md. App. 350; 134 A.3d 324 2016; USA v. Lambis, 2016 US Dist. LEXIS 90085 (NY).

SB2370
Short Description: JUV-COUNSEL REPRESENTATION
Status: P.A. 99-882, eff. 1-1-17
55 ILCS 5/3-4006 705 ILCS 405/5-170 705 ILCS 405/5-401.5 725 ILCS 5/103-2.1

Summary
Amends the Juvenile Court Act of 1987. Provides that in a proceeding under the Juvenile Court Act of 1987, a minor who was under 15 (rather than 13) years of age at the time of the commission of an act that if committed by an adult would be a violation of various offenses of the Criminal Code of 1961 or the Criminal Code of 2012 (homicide; sex offenses) must be represented by counsel throughout the entire custodial interrogation of the minor. Provides that an oral, written, or sign language statement of a minor, who at the time of the commission of the offense was under 18 years of age, is presumed to be inadmissible when the statement is obtained from the minor while the minor is subject to custodial interrogation by a law enforcement officer, State's Attorney, juvenile officer, or other public official or employee prior to the officer, State's Attorney, public official, or employee *reading modified Miranda* rights in its entirety to the minor.

Amends the Code of Criminal Procedure. Provides that an oral, written, or sign language statement of a minor who at the time of the commission of the offense was under 18 years of age, made as a result of a custodial interrogation conducted at a police station or other place of detention shall be presumed to be inadmissible as evidence in a criminal proceeding or a juvenile court proceeding for an act that if committed by an adult would be a misdemeanor sex offense or a felony offense unless (1) an electronic recording is made of the custodial interrogation; and (2) the recording is substantially accurate and not intentionally altered.

Amends the Counties Code. Provides that a case involving a minor who was under 15 years of age at the time of the commission of the offense who is required to have representation throughout the entire custodial interrogation that occurs in a county with a full-time public defender office, a public defender, without fee or appointment, may represent and have access to a minor during a custodial interrogation. Provides that a case involving a minor who was under 15 years of age at the time of the commission of the offense who is required to have representation throughout the entire custodial interrogation that occurs in a county without a full-time public defender, the law enforcement agency conducting the custodial interrogation shall ensure that the minor is able to consult with an attorney who is under contract with the county to provide public defender services. Provides that representation by the public defender shall terminate at the first court appearance if the court determines that the minor is not indigent.

Comment: "Simplified Miranda" language suggested by the ABA in a generic resolution
http://www.americanbar.org/groups/child_law/tools_to_use/attorneys/simplified_mirandawarningsforjuveniles.html
Language here based on a New York bill in 2016 (S6754; https://www.nysenate.gov/legislation/bills/2015/s6754)

SB2459

Short Description: MHDDC-VIDEO CONFERENCING-HEARG
Status: P.A. 99-535, eff. 1-1-17
405 ILCS 5/2-107.4 new

Synopsis As Introduced
Amends the Mental Health and Developmental Disabilities Code. Provides that the Illinois Supreme Court or any circuit court of this State may adopt rules permitting the use of video conferencing equipment in any hearing concerning the administration of psychotropic medication or electroconvulsive therapy subject to the following conditions: (1) if the parties, including the respondent, and their attorneys, including the State's Attorney, are at a mental health facility, or some other location to which the respondent may be safely and conveniently transported, and the judge and any court personnel are in another location; or (2) if the respondent and his or her attorney are at a mental health facility or some other location to which the respondent may be safely and conveniently transported, and all of the other participants including the judge are in another location, if, and only if, agreed to by the respondent and the respondent's attorney. Provides that in a hearing concerning the administration of psychotropic medication or electroconvulsive therapy, any court may permit any witness, including a psychiatrist, to testify by video conferencing equipment from any location in the absence of a court rule specifically prohibiting that testimony.

Comment: It is already the law. See 405 ILCS 5/3-806.1. Not used by GAC.

SB2465
Short Description: REPEAL IDOC INCARCERATION COST-RIMB
Status: Passed both Houses; Amend Veto (IDOC rule)
730 ILCS 5/3 multi 735 ILCS 5/4-101

Synopsis As Introduced
Amends the Unified Code of Corrections. Repeals provision that committed persons shall be responsible to reimburse the Department of Corrections for the expenses incurred by their incarceration at a rate to be determined by the Department. Amends the Code of Civil Procedure to make conforming changes.

Comment: AG & IDOC neutral on the bill in committee. $355K in FY15.

SB2512
Short Description: JUV CT-INFO-RELATIVES
Status: P.A. 99-625, eff. 1-1-17
705 ILCS 405/2-10

Synopsis As Introduced
Amends the Juvenile Court Act of 1987 concerning abused, neglected, or dependent minors. Provides that the court shall ensure, by inquiring in open court of each parent, guardian, custodian or responsible relative, that the parent, guardian, custodian or responsible relative has had the opportunity to provide the Department of Children and Family Services with all known names, addresses, and telephone numbers of each of the minor's living maternal and paternal adult relatives, including, but not limited to, grandparents, aunts, uncles, and siblings. Provides that the court shall advise the parents, guardian,

custodian or responsible relative to inform the Department if additional information regarding the minor's adult relatives becomes available.

SB2524
Short Description: DCFS YOUTH ID CARDS
Status: P.A. 99-659, eff. 1-1-17
15 ILCS 335/1A 15 ILCS 335/12

Summary
Amends the Illinois Identification Card Act. Provides for the application and fee waiver for first identification cards issued to a youth for whom the Department of Children and Family Services is legally responsible for or foster children upon turning the age of 16 years old until they reach the age of 21 years old. Defines "Youth for whom the Department of Children and Family Services is legally responsible for" or "Foster child". Effective one year after becoming law.

*SB2567
Short Description: -VEHICLE INSURANCE VERIFY
Status: P.A. 99-737, eff. 8-5-16
625 ILCS 5/7-604

Summary
Amends the Illinois Vehicle Code. Removes the repeal date of a Section concerning the verification of liability insurance policies. Effective immediately.

SB2601
Short Description: DHS-TASC-VACATE JUDGMENT
Status: P.A. 99-574, eff. 1-1-17
20 ILCS 301/40-10

Synopsis As Introduced
Amends the Alcoholism and Other Drug Abuse and Dependency Act. In a provision concerning a person who has successfully completed alcohol or drug addiction treatment as a condition of probation, provides that if such a person qualifies for a vacation of the judgment of conviction, he or she must file a motion to vacate the judgment of conviction at any time from the date of the entry of the judgment to a date that is not more than 60 days after the discharge of the probation (rather than within 30 days of the entry of the judgment).

SB2767
Short Description: CNTY CD-ENFORCE ORDINANCES
Status: Passed both Houses; Full Veto (lose tax sale protections)
55 ILCS 5/5-43035

Synopsis As Introduced

Amends the Counties Code. Provides that section concerning enforcement of judgments also applies to any tax or fee, or part of any tax or fee, unpaid after an administrative hearing are also a debt due and owing to the county (currently, only fines, other sanctions, or costs imposed in the administrative hearing).

SB2777
Short Description: DJJ PAROLE CONDITIONS & REVOCATIONS; JUVENILE SENTENCING
Status: P.A. 99-629, eff. 1-1-17

20 ILCS 4026/17 705 ILCS multi 725 ILCS multi 730 ILCS multi

Summary
Amends the Unified Code of Corrections. Provides that the Department of Juvenile Justice rather than the Prisoner Review Board shall decide the date of release on aftercare for youth committed to the Department under the Juvenile Court Act of 1987, except those committed for first degree murder & habitual offenders, and shall set conditions of aftercare release for all youth committed to the Department under the Juvenile Court Act of 1987. Provides that the Department of Juvenile Justice shall be responsible for all persons under 18 (rather than under 17) years of age when sentenced to imprisonment and committed to the Department under the Code of Corrections or the Juvenile Court Act of 1987. Amends various other Acts to make conforming changes.

In the amendatory changes to the Juvenile Court Act of 1987, provides that in no event shall a guilty minor be committed to the Department of Juvenile Justice for an offense which is a Class 4 felony of criminal trespass to a residence, criminal damage to property, criminal damage to government supported property, criminal defacement of property, disorderly conduct, or obstructing justice. In the amendatory changes to the Unified Code of Corrections, continues the Prisoner Review Board's authority to hear violations of aftercare release as filed by the Department of Juvenile Justice. Makes additional changes concerning the terms of aftercare release.

Comment: Question to DJJ as to application of adult/JSORA geographical and other sex offender restrictions?

SB2806
Short Description: VEH CD-RAIL SIGNAL CROSSING
Status: P.A. 99-663, eff. 1-1-17

625 ILCS 5/11-1201

Synopsis As Introduced
Amends the Illinois Vehicle Code. Provides that a driver of a vehicle that approaches a railroad grade crossing under circumstances in which a stop is required and does not stop within 50 feet but not less than 15 feet from the nearest rail, commits a petty offense for which a $500 fine (previously $250) shall be imposed for the first violation and a $1,000 fine (previously $500) shall be imposed for any subsequent violations.

SB2833
Short Description: COUNTY CODE-ENFORCE JUDGMENTS
Status: P.A. 99-739, eff. 1-1-17

55 ILCS 5/5-43035

Synopsis As Introduced
Amends the Counties Code. Provides that a judgment relating to a county code violation is a debt due and owing to a county and the findings, decision, and order of the hearing officer may be enforced in the same manner as a judgment entered by a court (currently, may be collected in accordance with applicable law).

SB2835
Short Description: VEH CD-PUBLIC SCHOOL HIGHWAYS
Status: P.A. 99-740, eff. 1-1-17
625 ILCS 5/11-1414

Summary
Amends the Illinois Vehicle Code. Requires a vehicle to stop before meeting or overtaking, from either direction, any school bus stopped on a highway, roadway, private road, parking lot, school property, or at any other location, including, without limitation, a location that is not a highway or roadway for the purpose of receiving or discharging pupils.

SB2861
Short Description: IL CODE OF MILITARY JUSTICE
Status: P.A. 99-796, eff. 1-1-17
20 ILCS 1805/34.1 etc 30 ILCS 105/5.875 new

Summary
Creates the Illinois Code of Military Justice (Code) in conformity with the federal Uniform Code of Military Justice to permit discipline of the Illinois National Guard by providing a military justice system including court-martial authorities meeting current legal standards of due process. Prohibits Guard members who are dismissed or dishonorably discharged from holding any elective or appointive office, position, or State or county employment for a period of 5 years unless such disability is removed by the Governor. Repeals provisions concerning: the separation of Guard members from active service; discharged Guard members ineligible to hold elective office or State or county employment; military offenses; courts-martial; board investigations of Guard members accused of certain acts while on military duty; and payment of a Guard member's defense expenses by the Adjutant General. Amends the State Finance Act. Creates the State Military Justice Fund. Effective January 1, 2017.

Amends the Illinois Administrative Procedure Act. Permits the Adjutant General to adopt emergency rules in order to provide for the expeditious and timely implementation of the provisions of the amendatory Act. Further amends the Military Code of Illinois. Restores and makes changes to a provision concerning the prosecution of civil or criminal actions committed by a member of the Illinois National Guard while in the performance of military duties. Maintains a provision concerning defense expenses paid by the Adjutant General. Effective January 1, 2017.

*SB2870
Short Description: ELEC MONITOR-DRUGS & ALCOHOL – PROBATION

Status: P.A. 99-797, eff. 8-12-16
725 ILCS 5/110-10 730 ILCS 5/5-6-3 3 730 ILCS 5/5-6-3.1 730 ILCS 5/5-7-1 1
730 ILCS 5/Ch. V Art. 8A various

Summary
Amends the Code of Criminal Procedure of 1963 and the Unified Code of Corrections. Provides that the Chief Judge of the circuit court may suspend any additional charges or fees for late payment, interest, or damage to any electronic monitoring device.
Amends the Electronic Home Detention Law. Changes the name of the Law to the Electronic Monitoring and Home Detention Law. Provides that an approved electronic monitoring device may also be used to record or transmit information as to the defendant's consumption of alcohol, consumption of drugs, location as determined through GPS, cellular triangulation, Wi-Fi, or other electronic means. Provides that if the supervising authority is a probation department, the Chief Judge of the circuit court may by administrative order establish a program for electronic monitoring of offenders, in which a vendor supplies and monitors the operation of the electronic monitoring device, and collects the fees on behalf of the county. Provides that the program shall include provisions for indigent offenders and the collection of unpaid fees and shall not unduly burden the offender and shall be subject to review by the Chief Judge of the circuit court. Effective immediately.

Comment: Meant to authorize vendor collection of SCRAM FEES. Initiative of IPCSA.

SB2875
Short Description: SURVEILLANCE-LOCATION AUTHORITY - AV
Status: P.A. 99-798, eff. 1-1-17
725 ILCS 168/10 & /15

Summary
Amends the Freedom From Location Surveillance Act. Provides that a court may grant a law enforcement's request to obtain current or future location information through testimony made through electronic means using a simultaneous video and audio transmission between the requestor and judge, based on sworn testimony communicated in the transmission. The entity making the request, and the court authorizing the request shall follow the same procedure under the Code of Criminal Procedure of 1963, which authorizes the electronic issuance of search warrants.

Further amends the Freedom from Location Surveillance Act. Provides that an investigative or law enforcement officer may seek to obtain location information in an emergency situation if the situation involves a clear and present danger of imminent death or great bodily harm to persons resulting from: (1) the use of force or the threat of the imminent use of force, (2) a kidnapping or the holding of a hostage by force or the threat of the imminent use of force, or (3) the occupation by force or the threat of the imminent use of force of any premises, place, vehicle, vessel, or aircraft. Provides that an investigative or law enforcement officer may seek to obtain location information in an emergency situation if the situation involves escape as defined in the Criminal Code of 2012.

Comment: Underlying controversy over constitutionality of acquiring cell-site location information (CSLI) without a warrant continues to split the federal district courts. OK in the 4th Cir.: USA v. Graham, No. 12-4659 (4th Cir. 2016 en banc). Court order not required under Stored Communications Act upon a showing of relevancy to an ongoing criminal investigation. In accord, USA v. Davis, 785 F.3d 498 (2015 en banc).

SB2876
Short Description: JOINDER & MONEY LAUNDERING
Status: P.A. 99-629, eff. 1-1-17
725 ILCS 5/111-4

Synopsis As Introduced
Amends the Code of Criminal Procedure of 1963. Adds the criminal offense of money laundering to the list of offenses that can be joined into one count of an indictment, rather than requiring each transaction to be prosecuted separately.

SB2880
Short Description: `CRIM PRO-VICTIM TESTIMONY; REMOTE VIDEO
Status: P.A. 99-630, eff. 1-1-17
725 ILCS 5/106B-5

Synopsis As Introduced
Amends the Code of Criminal Procedure of 1963. Provides that a court may order the testimony of a victim who is a child under 18, a person with a moderate, severe, or profound intellectual disability, or a person affected by a developmental disability by means of a closed circuit television in a proceeding for the prosecution of an offense of criminal sexual assault, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual abuse, aggravated criminal sexual abuse ***aggravated battery or aggravated domestic battery,*** the testimony is taken during the proceeding, and the judge determines that testimony by the child victim or victim with a moderate, severe, or profound intellectual disability or victim affected by a developmental disability in the courtroom will result in the child or person with a moderate, severe, or profound intellectual disability or person affected by a developmental disability suffering serious emotional distress such that the child or person with a moderate, severe, or profound intellectual disability or person affected by a developmental disability cannot reasonably communicate or that the child or person with a moderate, severe, or profound intellectual disability or person affected by a developmental disability will suffer severe emotional distress and is likely to cause the child or person with a moderate, severe, or profound intellectual disability or person affected by a developmental disability to suffer severe adverse effects.

Comment: Child sex complainant testimony via closed circuit testimony upheld in *Maryland v. Craig*, 497 U.S. 836 (1990).

SB2885
Short Description: CRIM PRO-REVERSAL REFUND
Status: P.A. 99-883, eff. 1-1-17
725 ILCS 5/124A-15

Synopsis As Introduced
Amends the Code of Criminal Procedure of 1963. In provision regarding refund of costs, fines, or fees upon reversal of conviction on a finding of actual innocence, the refund shall be determined by the judge and paid by the clerk of the court based upon the availability of funds in the subject fund account.

SB2907
Short Description: CRIM CD-PROP DAMAGE-THRESHOLD
Status: P.A. 99-631, eff. 1-1-17
720 ILCS 5/21-1 720 ILCS 5/21-1.2 720 ILCS 5/21-1.3

Synopsis As Introduced
Amends the Criminal Code of 2012. For the offenses of criminal damage to property, institutional vandalism, and criminal defacement of property, increases the threshold amount of the damage to property from exceeding $300 to exceeding $500 in which the offense is enhanced from a misdemeanor to a felony or in which the offense is enhanced to a higher class of felony.

Comment: As no mention of prospective effect only, Statute on Statutes allows application to pending cases. (5 ILCS 70/4). See prior theft $ change; People v. Hendree, 2012 IL App (1st) 110520-U.

*SB2947
Short Description: CRIM CD-EMS-DEFINITION
Status: P.A. 99-816, eff. 8-15-16
720 ILCS 5/12-0.1 720 ILCS 5/12-2 720 ILCS 5/12-3.05 720 ILCS 5/24-1.2 720 ILCS 5/24-1.2-5

Summary
Amends the Criminal Code of 2012. Redefines various statutes concerning bodily harm directed against emergency medical services personnel. Changes various references from "emergency medical technician" to "emergency medical services personnel" in the Bodily Harm and Deadly Weapons Article of the Code.
Provides that "emergency medical services personnel" includes all ambulance crew members, including drivers or pilots. Effective immediately

*SB2974
Short Description: VEH CD- REG FEE
Status: P.A. 99-707, eff. 7-29-16
625 ILCS 5/3-806.3 625 ILCS 5/3-808.1

Summary
Amends the Vehicle Code. Adds a Section concerning the registration fee paid by a vehicle owner who has been approved for benefits under the Senior Citizens and Disabled Persons Property Tax Relief Act. Provides that any vehicle owner who has been approved for benefits under the Senior Citizens and Disabled Persons Property Tax Relief Act, or a person who is the spouse of such a person, shall not be required to pay specified surcharges that would otherwise be collected in addition to the vehicle registration fee.
Expands permanent registration plate provision to include additional school district/community college/governmental medical facility vehicles. Effective immediately.

SB2989

Short Description: LIQUOR-TRANSPORT OF ALCOHOL
Status: P.A. 99-904, eff. 8/26/16 in part (fees); 1/1/17 in part
235 ILCS 5/multi

Summary
Amends the Liquor Control Act. Winery shipper's license application must include all addresses from which the applicant intends to ship wine, including third-party provider. Various license fee amounts changed. Violations of cease and desist orders = Class 4 felony. Various business offense fine/Class 4 penalty limits depending on amount of distilled spirits, wine, or beer; subsequent offenses and license status.
Provides that certain restrictions on the manufacture, importation for distribution, transportation from outside the State into the State, and distribution or sale of alcoholic liquor without a license under the Act do not apply to a rail carrier. License fee changes effective immediately. Other provisions effective 1/1/17.

*SB3005
Short Description: PARK DIST-CRIM BACKGRND CHECK
Status: P.A. 99-884, eff. 8-22-16
70 ILCS 1205/8-23 70 ILCS 1505/16a-5

Summary
Amends the general Park District Act and the Chicago Park District Act. Removes lifetime barriers on employment in Park Districts for people with drug convictions. The bill inserts a 7 year wait period since sentence completion after which people with drug convictions would be eligible to apply and considered for employment by park districts. It also recognizes Certificate of Good Conduct for overcoming employment barriers and removes low level cannabis offenses, prostitution and misdemeanor public indecency from the list of permanently disqualifying offenses.. Effective immediately.

*SB3007
Short Description: PUB AID-TRAFFICKING VICTIMS
Status: P.A. 99-870, eff. 8-22-16
305 ILCS 5/multi

Synopsis As Introduced
Amends the Illinois Public Aid Code. Includes persons who are foreign-born victims of trafficking, torture, or other serious crimes in the categories of non-citizens who are eligible for cash or medical assistance under the Code. Defines "foreign-born victims of trafficking, torture, or other serious crimes". Provides that beginning January 1, 2018, the Department of Healthcare and Family Services shall provide (subject to federal approval) medical assistance coverage to foreign-born victims of human trafficking, torture, or other serious crimes and to their derivative family members who: reside in Illinois; are not otherwise eligible under the Code; meet certain income guidelines; and have filed or are preparing to file a formal application for status pursuant to specified provisions of the United States Code. Provides that such a person is ineligible for continued medical assistance coverage if he or she has not filed a formal application for status within one year after the date of his or her application for cash assistance or SNAP benefits; and that if there is a final denial of the person's visa or asylum application, any medical assistance coverage provided to that person and his or her derivative family members shall be

terminated. Adds the Survivor Support and Trafficking Prevention Article to the Code with provisions concerning: cash assistance and SNAP benefits for persons who are foreign-born victims of trafficking, torture, or other serious crimes and their derivative family members; eligibility determinations; work requirements and exemptions; and termination of benefits. Grants the Department rulemaking authority to implement these provisions.
Provides that the program is inoperative on and after June 30, 2019. Effective immediately.

*SB3018
Short Description: TRUCK GLIDER TITLING
Status: P.A. 99-748, eff. 8-5-16
625 ILCS 5/multi

Summary
Amends the Illinois Vehicle Code. Provides that an "essential part" does not include an engine, transmission, or a rear axle that is used in a glider kit. Defines "glider kit". Provides that an owner of a glider kit who wishes to have the vehicle titled or registered as a glider kit shall submit an application to be inspected by the Secretary of State Department of Police. Upon successful completion of the inspection, provides the method of title or registration for the glider kit. Effective immediately.

*SB3034
Short Description: DONATE JURY FEES-PILOT PROGRAM
Status: P.A. 99-583, eff. 7-15-16
55 ILCS 5/4-11001.5 new

Synopsis As Introduced
Amends the Counties Code. Creates the Lake County Children's Advocacy Center Pilot Program. Provides that under the pilot program, which begins January 1, 2017 and ends December 31, 2018, any grand or petit juror in Lake County may elect to have his or her juror fees donated to the Lake County Children's Advocacy Center. Provides that the Lake County board shall create rules and policies concerning the pilot program and report yearly to the General Assembly and Governor on the pilot program. Further provides that the Section will be repealed on December 31, 2019. Effective immediately.

SB3096
Short Description: SEX CRIME – POLICE TRAINING & RAPEKIT CONSENT; ISP TOXICOLOGY REPORTS
Status: P.A. 99-801, eff. 1-1-17
New Act 20 ILCS 2605/multi 50 ILCS 705/multi 410 ILCS 70/multi
725 ILCS 202/10 20 ILCS 2605/multi 30 ILCS 500/1-10 730 ILCS 5/5-4-3a

Summary
Creates the Sexual Assault Incident Procedure Act. Provides that on or before January 1, 2018, every law enforcement agency shall develop, adopt, and implement written policies regarding procedures for incidents of sexual assault or sexual abuse. Provides that the Office of the Attorney General in consultation with the Illinois Law Enforcement Training Standards Board and the Department of State Police shall develop this model policy. Provides guidelines on reporting of sexual assault and sexual abuse to law enforcement agencies, and the release and storage of sexual assault evidence. Makes

corresponding changes in the Illinois Police Training Act, the Civil Administrative Code of Illinois, the Sexual Assault Evidence Submission Act, and the Sexual Assault Survivors Emergency Treatment Act. Provides that a State's Attorney who is notified that a hospital is in possession of sexual assault evidence shall, within 72 hours, contact the appropriate law enforcement agency to request that the law enforcement agency take immediate physical custody of the sexual assault evidence. Makes other technical changes.

Further Amends the Department of State Police Law of the Civil Administrative Code of Illinois. Provides that the Division of Forensic Services shall establish administrative rules in order to set forth standardized requirements for the disclosure of toxicology results and other relevant documents related to a toxicological analysis. Provides that these administrative rules are to be adopted to produce uniform and sufficient information to allow a proper, well-informed determination of the admissibility of toxicology evidence and to ensure that this evidence is presented competently. Provides that these administrative rules are designed to provide a minimum standard for compliance of toxicology evidence and is not intended to limit the production and discovery of material information. Provides that the administrative rules shall be submitted by the Department of State Police into the rulemaking process on or before June 30, 2017. Provides that the Department of State Police shall employ laboratory technicians and other specially qualified persons to aid in the identification of criminal activity, and permits the Department of State Police to employ polygraph operators.

Amends the Unified Code of Corrections. Provides that in consultation with and subject to the approval of the Chief Procurement Officer, the Department of State Police may obtain contracts for services, commodities, and equipment to assist in the timely completion of forensic biology, DNA, drug chemistry, firearms/toolmark, footwear/tire track, latent prints, toxicology, microscopy, trace chemistry, and Combined DNA Index System (CODIS) analysis.
Amends the Illinois Procurement Code. Provides that contracts for services, commodities, and equipment to support the delivery of timely forensic science services are not subject to various provisions of the Illinois Procurement Code, but only for a period of 2 years. Makes other changes.

Comment: Standardized toxicology results via administrative rule akin to DNA disclosure pursuant to SCR 417 for DNA evidence. It is a floor, not a ceiling. Start tracking the Flinn Report.

SB3106
Short Description: CRIM PRO-INTELLECT DISABILITY
Status: P.A. 99-752, eff. 1-1-17
725 ILCS 5/115-10

Summary
Amends the Code of Criminal Procedure of 1963. Makes the hearsay exemption apply to a person with an intellectual disability, a person with a cognitive impairment, or a person with a developmental disability. Defines a person with an intellectual disability as a person with significantly subaverage general intellectual functioning which exists concurrently with an impairment in adaptive behavior. Defines a person with cognitive impairment as a person with a significant impairment of cognition or memory that represents a marked deterioration from a previous level of function. Cognitive impairment includes, but is not limited to, dementia, amnesia, delirium, or a traumatic brain injury. Defines a person with a developmental disability as a person with a disability that is attributable to (1) an intellectual disability, cerebral palsy, epilepsy, or autism, or (2) any other condition that results in an impairment

similar to that caused by an intellectual disability and requires services similar to those required by a person with an intellectual disability.

Comment: Like it or not – "when the declarant appears for cross-examination at trial, the confrontation clause places no constraints at all on the use of prior testimonial statements." People v. Sharp, 391 Ill. App.3d 947, 953 (4th D. 2009).

*SB3112
Short Description: FOIA-PERSONS IN CUSTODY & INFO
Status: Passed Senate; Passed House w/ amend; Senate Concurs/MTR
5 ILCS 140/3 5 ILCS 140/3.4 new

Summary
Amends the Freedom of Information Act. Provides that a public body shall respond to a request for records from a person committed to the Department of Corrections or a county jail within 21 working days after receipt. Exempts from disclosure under the Act specified records requested by a person in a county jail or committed to the Department of Corrections. Exempts from inspection and copying, while the case is pending at the trial level, information or materials received, generated, or maintained by a State's Attorney or county sheriff as part of the criminal discovery process that the disclosure of which would violate the Supreme Court Rule concerning the disclosure of discovery materials in felony cases. Effective immediately.

House Committee Amendment No. 1
Deletes reference to:
5 ILCS 140/3 from Ch. 116, par. 203
5 ILCS 140/3.4 new

Deletes language providing that a public body shall respond to a request for records from a person committed to the Department of Corrections or a county jail within 21 working days after receipt. To provisions exempting disclosure of certain documents while a case is pending at the trial level, adds information and materials of other prosecutors.

House Floor Amendment No. 2
Deletes language exempting from inspection and copying records requested by a person committed to the Department of Corrections or a county jail if those materials include law enforcement records of other persons in the custody of or committed to the Department of Corrections or a county jail, except as these records may be relevant to the requester's current or potential case or claim. Exempts instead law enforcement records of other persons requested by a person committed to the Department of Corrections or a county jail, including, but not limited to, arrest and booking records, mug shots, and crime scene photographs, except as these records may be relevant to the requester's current or potential case or claim. Deletes language exempting from inspection and copying certain information or materials that the disclosure of which would violate the Supreme Court Rule concerning the disclosure of discovery materials in felony cases***. Exempts instead certain information or materials that relate to a criminal case pending at the trial level.***

Comment: AG takes position in Du Page County that video in a pending criminal case is FOIDable!

SB3129
Short Description: POLICE DOG RETIREMENT
Status: P.A. 99-817, eff. 1-1-17
New Act

Synopsis As Introduced
Creates the Police Dog Retirement Act. Provides that a police dog, which is deemed no longer fit for public service, may be offered by the county, municipality, or State law enforcement agency to the officer or employee who had custody and control of the animal during its service. If the officer or employee does not wish to keep the dog, it may be offered to another officer or employee in the agency, or to a non-profit organization or a no-kill animal shelter that may facilitate an appropriate adoption of the dog.

*SB3162
Short Description: COURT CLERK: E-BUSINESS FEE
Status: P.A. 99-859, eff. 8-19-16
55 ILCS 5/5-39001 705 ILCS 105/27.1a;27-2;27.3a&c ; 27.7 705 ILCS 105/28

Summary
Counties Code amended to provide civil filing fee for law library not to exceed $21 (current) through December 31, 2021; and $20 thereafter.
Clerk of Courts Act 27.1a (counties not over 500,000)civil filing fee shall be a maximum of $160 (current) through December 31, 2021; and a maximum of $154 thereafter.
Clerk of Courts Act 27.2 (counties 500,000 to 3 million) civil filing fee shall be a maximum of $190 (current) through December 31, 2021; and $184 thereafter.
Clerk of Courts Act 27.2a (counties 3 million or more) civil filing fee shall be a maximum of $240 (current) through December 31, 2021; and $234 thereafter.
Clerk of Courts Act 27.3a automated record keeping fee expanded to include e-business programs. Starting on day 30 after the effective date, a clerk that imposes such a civil filing fee shall also charge and collect an additional $9 e-business fee. Waiver only if specifically so waived by the court. Not applicable to changes of venue, or administrative ruling review. Fee remission to Treasurer for deposit into the Supreme Court Special Purposes Fund – not subject to administrative chargebacks.
Clerk of Court Act 27.7 Children's waiting room civil filing fee to be $10 maximum (current) through December 31, 2021, and $8 maximum thereafter.
Moneys in the Supreme Court Special Purposes Fund shall be used additionally for e-business programs in the circuit (new) and reviewing courts. Immediate effective dates

SB3164
Short Description: CD CORR-SENTENCING-SPAC REPORT
Status: P.A. 99-861, eff. 1-1-17
730 ILCS 5/5-4-1 730 ILCS 5/5-8-8

Summary
Amends the Unified Code of Corrections. Provides that in imposing a sentence of imprisonment or periodic imprisonment for Class 3 or 4 felony offense for which a sentence of probation or conditional

discharge is an available sentence, if the defendant has no prior sentence of probation or conditional discharge and no prior conviction for a violent crime, the defendant shall not be sentenced to imprisonment before review and consideration of a presentence report and determination and explanation of why the particular evidence, information, factor in aggravation, factual finding, or other reasons support a sentencing determination that one or more of specified statutory aggravating factors apply and that probation or conditional discharge is not an appropriate sentence.
Provides that the Sentencing Policy Advisory Council shall publish a report on the trends in sentencing for these offenders, the impact of the trends on the prison and probation populations, and any changes in the racial composition of the prison and probation populations that can be attributed to the changes made to sentencing by the amendatory Act.

Comment: “imprisonment” appears to include only IDOC.
(730 ILCS 5/5-1-10) (from Ch. 38, par. 1005-1-10)
Sec. 5-1-10. Imprisonment. "Imprisonment" means incarceration in a correctional institution under a sentence of imprisonment and does not include "periodic imprisonment" under Article 7.

SB3284
Short Description: CNTY CD-ADMINISTRATIVE HEARING; INTER-GOVT AGREEMENT
Status: P.A. 99-754, eff. 1-1-17
55 ILCS 5/5-multi

Summary
Amends the Administrative Adjudication - Specified Counties Division of the Counties Code. Provides that specified counties may provide administrative hearings for ordinance violations for units of local governments (including not-for-profit corporations organized for the purpose of conducting public business) as well as county ordinance violations (currently, only county ordinance violations) if the county and unit of local government have entered into an intergovernmental agreement or contract for the county to do so. Makes conforming changes in the Division.
Provides that the specified counties may provide for a system of administrative adjudication of violations of ordinances enacted by a unit of local government only if it meets the requirements of the amendatory Act. Adds a requirement that the unit of local government must not have a system of administrative adjudication in order for the county to administratively adjudicate the unit of local government's violations.

*SB3354
Short Description: OFFENDER REG ACTS-REGISTRATION; Chicago
Status: P.A. 99-755, eff. 8-5-16
730 ILCS 148/10 730 ILCS 150/3 730 ILCS 154/10

Synopsis As Introduced
Amends the Arsonist Registration Act, the Sex Offender Registration Act, and the Murderer and Violent Offender Against Youth Registration Act. Provides that the place of registration for a person who is required to register under any of the Acts with the Chicago Police Department is at a fixed location designated by the Superintendent of the Chicago Police Department (rather than at the Chicago Police Department Headquarters). Effective immediately.

Comment: Based on school being near 35th & State in Chicago.

*SB3401
Short Description: VETERANS/SERVICEMEMBERS COURT
Status: P.A. 99-819, eff. 8-15-16
730 ILCS 167/multi

Summary
Amends the Veterans and Servicemembers Court Treatment Act. Provides that assessments, mentoring, and treatment programs may be provided by a veterans assistance commission. Effective immediately.

SB3441
Short Description: VIOLENT GUN OFFENDER SENTENCNG (Shell bill)
Status: Senate Assigns
Senate Sponsors
Sen. Antonio Muñoz - Kwame Raoul - Jacqueline Y. Collins - Julie A. Morrison

Statutes Amended In Order of Appearance
New Act

Synopsis As Introduced
Creates the Violent Gun Offender Sentencing Act. Contains only short title and purpose provisions.

Comment: Chicago Police Department and CCSAO smarting after loss of AUUW's mandatory minimum 1-year DOC sentence in People v. Mosley, 2015 IL 115872.

House Bills

HB114
Short Description: JUV CT-CRITICAL INCIDENT RPT
Status: P.A. 99-664, eff. 1-1-17
705 ILCS 405/5-745

Summary
Amends the Juvenile Court Act of 1987. Provides that if the Department of Children and Family Services is appointed legal custodian or guardian of a minor under this Act, the Department of Children and Family services shall file updated case plans with the court every 6 months (rather than providing a guardian or legal custodian appointed under this Act shall file updated case plans with the court every 6 months).
Provides the Department of Juvenile Justice shall notify the court in writing, filed within 10 days of the occurrence, of a critical incident involving a youth committed to the Department and a youth who has been released by the Prisoner Review Board but remains in a Department facility solely because the

youth does not have an approved aftercare release site. Provides that the Department shall notify the court in writing of a youth, except a youth who has been adjudicated a habitual or violent offender, or committed for first degree murder, who has been held in a Department facility for over one consecutive year with a supplemental report filed every 6 months thereafter. Provides that the notification shall contain a brief description of the incident or situation and a summary of the minor's current physical, mental, and emotional health and the actions the Department took in response. Provides that upon receipt of the notification, the court may require the Department to make a full report. Provides that with respect to any report required to be filed with the court, the Independent Juvenile Ombudsman shall provide a copy to the minor's court appointed guardian ad litem and to the minor's attorney. Provides that under specified circumstances, the Independent Juvenile Ombudsman shall send a notice to the minor's parents or guardian that the report is available and will be provided by the Independent Juvenile Ombudsman upon request.

Comment: Prompted by downstate youth misdemeanant having a mental breakdown @ Kewanee.

HB1127
Short Description: SEX OFFENSE STATUTE OF LIMITATIONS
Status: Passed House; SCRIM sub (Bertino-Tarrant); time ext 12/31
720 ILCS 5/3-5 720 ILCS 5/3-6 6

Summary
. Amends the Criminal Code of 2012. Provides that when the victim is under 18 years of age at the time of the offense, a prosecution for criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, aggravated criminal sexual abuse, or *felony criminal sexual abuse* may be commenced at any time regardless as to whether corroborating physical evidence is available or an individual who is required to report an alleged or suspected commission of any of these offenses under the Abused and Neglected Child Reporting Act fails to do so. Makes conforming changes.

HB1128
Short Description: SEX OFFENSE – STATUTE OF LIMITATIONS
Status: Passed House; SCRIM sub (Cullerton); time ext 12/31
720 ILCS 5/3-5 720 ILCS 5/3-6

Summary
Amends the Criminal Code of 2012. Provides that a prosecution may be commenced at any time when the victim is under 18 years of age at the time of the offense for: involuntary servitude, involuntary sexual servitude of a minor, trafficking in persons, indecent solicitation of a child, indecent solicitation of an adult, sexual exploitation of a child, permitting sexual abuse of a child, failure to report sexual abuse of a child, custodial sexual misconduct, sexual misconduct with a person with a disability, sexual relations within families, solicitation of a sexual act, promoting prostitution, promoting juvenile prostitution, patronizing a prostitute, or patronizing a minor engaged in prostitution.

HB1129
Short Description: SEX OFFENSE – STATUTE OF LIMITATTIONS
Status: Passed House; SCRIM sub (Cullerton) ; time ext 12/31

720 ILCS 5/3-5 720 ILCS 5/3-6

Summary
Amends the Criminal Code of 2012. Provides that a prosecution may be commenced at any time when the victim is under 18 years of age at the time of the offense for: solicitation to meet a child, child pornography, posting of identifying or graphic information on a pornographic Internet site or possessing graphic information with pornographic material, non-consensual dissemination of private sexual images, grooming, or traveling to meet a minor.

HB1437
Short Description: CRIM PROSECUTION STATS ANALYSIS
Status: P.A. 99-666, eff. 1-1-17
New Act

Summary
Creates the Criminal Diversion Racial Impact Data Collection Act. Requires that, in accordance with reporting guidelines for law enforcement agencies under the Criminal Identification Act, the Illinois Criminal Justice Information Authority shall report the number of persons arrested and released without charging, and the racial and ethnic composition of those persons. Requires that, in accordance with reporting guidelines for State's Attorneys under the Criminal Identification Act, the Authority shall report the number of persons for which formal charges were dismissed, and the racial and ethnic composition of those persons. Requires that, in accordance with reporting guidelines for circuit court clerks under the Criminal Identification Act, the Authority shall determine and report the number of persons admitted to a diversion from prosecution program, and the racial and ethnic composition of those persons, separated by each type of diversion program. Provides that the Authority shall publish information received and an assessment of the quality of that information under the Act every calendar year. Provides that the Authority, Department of State Police, Administrative Office of Illinois Courts, and Illinois State's Attorneys Association may collaborate on any necessary training concerning the provisions of the Act. Contains legislative findings. Defines required terms. Provides for a repeal date of the Act on December 31, 2020. Effective January 1, 2017.

HB2569
Short Description: COLLATERAL CONSEQUENCE ADMONITIONS-GUILTY PLEA
Status: P.A. 99-871, eff. 1-1-17
725 ILCS 5/113-4

Summary
Amends the Code of Criminal Procedure. Provides that if the defendant pleads guilty the plea shall not be accepted until the court shall have fully explained to the defendant the sentence for any future conviction may be increased or there may be a higher possibility of the imposition of consecutive sentences ; that as a consequence of a conviction or a plea of guilty, there may be registration requirements that restrict where the defendant may work, live, or be present ; and that as a consequence of a conviction or a plea of guilty, there may be an impact upon the defendant's ability to, among others: retain or obtain housing in the public or private market; retain or obtain employment; and retain or obtain a firearm, an occupational license, a driver's license.

Comment: Employment Flag-- Law governing employment. Employment requiring fingerprints also is a flag. Also if occupation licensed through State Department of Financial and Professional Regulation.
See the ABA collateral consequence website www.abacollateralconsequences.org

Note also "certificates of relief from disability and of good conduct" from Safer Foundation. Anthony Lowery Director, Policy & Advocacy, Safer Foundation; Office: 312-431-8992; E-mail: anthony.lowery@saferfoundation.org Website: www.saferfoundation.org

Contacts: Beth Johnson, Cabrini Green Legal Aid (312-738-2452); Margaret Stapleton, Shriver Center on Poverty Law (312-368-3327); **Todd Belcore of Chicago Social Change** (773-263-3830) tbelcore@chicagosocialchange.org; Safer Foundation; CARPLS for Cook County (312-738-9200).
.
Public housing/Section 8 housing bars "any drug-related behavior on or off the premises by a household member." Chicago pilot waiver program -- if gets treatment. Violent behavior (even a battery w/ court supervision) could put renter at risk of eviction. Contact Chicago Coalition for the Homeless; attn.: Rachel Ramirez @ 312-641-4140; or Lawrence Wood, Housing Director, LAF @ 312-347-9330. Note: Yearly record checks by HUD officials of renters & occupants.

For employment licensing/waiver questions, query Samantha Tuttle @ Heartland Alliance (312-660-1300) STuttle@heartlandalliance.org

For driver's license & CDL impact, contact Charlie Beach (312-739-0500) or Steve Baker (ISBA Traffic list serve) @ 312-603-0720.

Relief in other states? https://www.nacdl.org/rightsrestoration/

*HB2822
Short Description: HUMAN TRAFFICKING TASK FORCE
Status: P.A. 99-864, eff. 8-22-16
New Act

Summary
Creates the Human Trafficking Task Force Act. Provides requirements regarding the legislative/administraive composition and duties of the task force. Provides that the task force shall provide a report containing specified information to the General Assembly and Governor no later than June 30, 2016. Abolishes the task force and repeals the Act on or before June 30, 2017. Taskforce abolished thereafter. Administrative support provided by DCFS. Effective immediately.

HB3363
Short Description: RECYCLABLE METAL TASK FORCE
Status: P.A. 99-760, eff. 1-1-17
815 ILCS 325/6.5

Summary
Amends the Recyclable Metal Purchase Registration Law. Adds a representative of a local exchange carrier doing business in Illinois to serve as a public member of the Recyclable Metal Theft Task Force.

HB4036
Short Description: VICTIM ECON SECURITY ALL4WKS
Status: P.A. 99-765, eff. 1-1-17
820 ILCS 180/10 820 ILCS 180/20

Summary
Amends the Victims' Economic Security and Safety Act. Provides that the term "employer" includes any person who employs at least one employee. Provides that leave may be used by an employee who has a family or household member who is the victim of domestic or sexual violence. Provides that leave may be used for the time a victim is experiencing an incident of domestic or sexual violence. Provides that employees working for an employer that employed at least one but not more than 14 employees shall be entitled to 4 workweeks of leave during any 12-month period. Effective January 1, 2017.

HB4105
Short Description: VEH CD-BLUE DOT TAIL LIGHTS
Status: P.A. 99-598, eff. 1-1-17
625 ILCS 5/12-208

Synopsis As Introduced
Amends the Illinois Vehicle Code. Provides that motorcycles may be equipped with a blue light or lights located on the rear of the motorcycle as a part of the motorcycle's rear stop lamp or lamps.

HB4264
Short Description: BARBER/COSMETOLOGY ACT - TRAINING AMENDMENTS
Status: P.A. 99-766, eff. 1-1-17
225 ILCS 410/multi

Summary
Amends the Barber, Cosmetology, Esthetics, Hair Braiding & Nail Technology Act. Provides for criminal and civil immunity for action or inaction taken by trained licensees concerning domestic violence or sexual assault. Mandates the continuing education component includes domestic violence and sexual assault awareness education as prescribed by rule of DFPR. Waiver authorized by rule.

HB4326
Short Description: CD CORR-HARDIN CTY WORK CAMP
Status: Passed both Houses; Full Veto (No $)
730 ILCS 5/3-2-2.3 new

Synopsis As Introduced
Amends the Unified Code of Corrections. Provides that the Department of Corrections shall operate the Hardin County Work Camp located in Cave-In-Rock, Illinois. Effective immediately.

Comment: Closed due to fire.

*HB4334
Short Description: VEH CD-REGISTRATION RENEWAL
Status: P.A. 99-887, eff. 8-25-16
625 ILCS 5/3-821.2

Summary
Amends the Illinois Vehicle Code. Provides that the Secretary of State shall not impose a delinquent registration renewal fee if a vehicle's registration expires during a period of time in which no notice, by U.S. mail, was sent to the vehicle owner by the Secretary. Provides that any local, county, municipal, or State law enforcement agency may not issue a citation for an expired registration until one month after the expiration of the registration. Provides that the Secretary may resume collection of the delinquent registration renewal fee when the Secretary resumes mailing the registration renewal notices to vehicle owners, and that any local, county, municipal, or State law enforcement agency may resume citing a vehicle with an expired registration without waiting the one-month period. Provides that the changes made by the amendatory Act apply only to vehicle registrations that expire on or after the effective date of the amendatory Act.

Provides that a computer print-out from the Secretary of State's website setting forth the calendar months in which registration renewal notices were not sent to all owners of passenger vehicles of the first division and motor vehicles of the second division weighing not more than 8,000 pounds shall be admissible as evidence to establish an affirmative defense to a citation issued by any local, county, municipal, or State law enforcement agency within one month after the expiration of the vehicle expiration. Provides the computer print-out shall be prima facie evidence of the correctness of the information contained in it.
Makes the added provision inoperative on and after June 30, 2017. Effective immediately.

*HB4360
Short Description: SCH CD-EDUCATOR QUALIFICATIONS
Status: P.A. 99-667, eff. 7-29-16
105 ILCS 5/ multi

Synopsis As Introduced
Amends the School Code. Provides that no one may be licensed to teach or supervise in the public schools of this State who has been convicted of certain drug offenses **until 7 years** following the end of the sentence for the offense. Makes changes to provisions relating to the conviction of certain offenses as grounds for revocation of an educator license, including changing the definitions of terms, providing for disqualification for licensure, and providing that suspension of a license or denial of an application for a license of a person who has been convicted of certain drug offenses shall last until 7 years (now forever) following the end of the sentence for the offense. Makes technical corrections in provisions requiring a criminal history records check to be performed with regard to applicants for employment with a school district. Effective immediately.

*HB4369
Short Description: BOAT RACING CERT & INSURANCE
Status: P.A. 99-526, eff. 7-8-16
625 ILCS 45/5-18

Summary
Amends the Boat Registration and Safety Act. Provides that a boating safety certificate is not required for a person who is temporarily using the waters of this State for the purpose of participating in a boat racing event sanctioned by the Department of Natural Resources or authorized federal agency. Requires the organizer or holder of the sanctioned event to possess liability insurance for property damage and bodilyl injury or death with a minimum benefit of $1,000,000 that shall remain in effect through the entirety of the event. Effective immediately.

HB4387
Short Description: PILOT LICENSE REGISTRATION
Status: P.A. 99-605, eff. 1-1-17
620 ILCS 5/42

Summary
Amends the Illinois Aeronautics Act. Provides registration of an airman with the Division of Aeronautics of the Department of Transportation shall be one-time with a fee of $20 payable at registration.

*HB4391
Short Description: TWP CD-CRIMINAL CONVICTIONS
Status: P.A. 99-546, eff. 7-15-16
60 ILCS 1/55-6 new

Synopsis As Introduced
Amends the Township Code. Provides that a person is not eligible to hold any office if that person, at the time required for taking the oath of office, has been convicted in any court located in the United States of any infamous crime, bribery, perjury, or other felony. Effective immediately.

HB4425
Short Description: DCFS-ABUSE RPT-SERVICE MEMBER
Status: P.A. 99-638, eff. 1-1-17
325 ILCS 5/4.4b new

Summary
Amends the Abused and Neglected Child Reporting Act. Requires the Department of Children and Family Services to determine the military status of each parent or guardian who is named as the alleged perpetrator in a child abuse or neglect report.
In a provision requiring the Department of Children and Family Services to notify a Department of Defense Family Advocacy Program if the Department determines that a parent or guardian who is named as the alleged perpetrator of child abuse or neglect is a service member, requires the Department to notify the geographically closest Department of Defense Family Advocacy Program within the State that there is an allegation of abuse or neglect against the parent or guardian that is open for investigation. Provides that if the Department determines that a person or guardian is a member of the Illinois National Guard, the Department shall also notify the Office of the Adjutant General that there is an allegation of abuse or neglect against the parent or guardian that is open for investigation.

*HB4445
Short Description: SECRETARY OF STATE MISCELLANY
Status: P.A. 99-607, eff. 7-22-16
15 ILCS 335/12 625 ILCS 5/ multi

Summary
Amends the Illinois Identification Card Act. Provides that the fee for a duplicate temporary Illinois Identification Card shall be $5.
Amends The Illinois Vehicle Code. Modifies the dishonored payment penalty provision to mandate the 25% penalty to commence after 60 days from the date the dishonored payment was first delivered (now from when the fee or tax is due). 6-206's discretionary authority to suspend or revoke to include submission of a false or altered medical examiner's certificate, or the provision of false information to obtain the certificate (for CDL). In 6-506's Commercial Driver's License section, federal exemption for CDL exemption for covered farm vehicles is affirmed, but "the driver must successfully complete any tests the SOS deems necessary." The exemption only applies to drivers age 21 or older in interstate driving, and to persons 18 or older in intrastate driving. Administrative rules authorized. CDL medical information may be shared with Federal Motor Carrier Safety Administration. Immediate effective date.

HB4447
Short Description: PARENTAGE ACT-VARIOUS
Status: P.A. 99-769, eff. 1-1-17
750 ILCS 46/103 etc/

Summary
Amends the Illinois Parentage Act of 2015. Makes numerous changes in provisions concerning: definitions; the establishment of the parent-child relationship; presumption of parentage; proceedings to declare the non-existence of the parent-child relationship; voluntary acknowledgment; rules for acknowledgment and denial of parentage; temporary orders; injunctive relief; standing; venue; genetic testing; joinder of proceedings; men who father through sexual assault or sexual abuse; judgment; the provision of information to the State Case Registry; enforcement; modification; and the right to counsel.

Makes changes concerning the required notices on the voluntary acknowledgment of parentage form. Changes the definition of "gestational surrogacy". Changes "acknowledgment" to "voluntary acknowledgment" and makes corresponding changes. Provides that any voluntary acknowledgment or denial or rescission of acknowledgement of parentage that was completed prior to January 1, 2016 (the effective date of the Illinois Parentage Act of 2015) is valid if it met all criteria for validity at the time it was signed. In a Section concerning temporary orders, specifies that "child" includes a non-minor child with a disability. In a Section concerning the authority to deny genetic testing, provides that it shall be presumed to be equitable and in the best interests of the child to grant a motion by the child seeking an order for genetic testing, and the presumption may be overcome by clear and convincing evidence that extraordinary circumstances exist making the genetic testing contrary to the child's best interests. Makes a change concerning the guidelines and standards the court must use in determining temporary child support. Makes a change in the Section concerning standing. Makes changes in provisions governing the effect of a judgment that lacks an explicit allocation of parental responsibilities. In provisions concerning support, changes "father" and "non-custodial parent" to "person obligated to pay

support". Provides that the Act applies to all pending actions and proceedings commenced prior to its effective date with respect to issues on which a judgment has not been entered. Deletes language providing that the repeal of the Illinois Parentage Act of 1984 shall not affect rights or liabilities under that Act which are the subject of proceedings pending on the effective date of the Illinois Parentage Act of 2015. Makes other changes.
Provides that the court's order granting a child's request for genetic testing must specify the ways in which the testing results may be used for purposes of protecting the child's best interests.

*HB4515
Short Description: HEALTH CARE WORKER REGISTRY
Status: P.A. 99-872, eff. 1-1-17
210 ILCS 45/3-206.01 225 ILCS 46/multi

Summary
Amends the Nursing Home Care Act. Requires the Department of Public Health to make the Health Care Worker Registry that includes background check and training information accessible by health care employers. Allows the Department to maintain a publicly accessible registry. Makes changes regarding information that must be contained in the registry accessible to health care employers. Requires the Department to limit specific offense information on an applicant or employee. *Requires that the public registry report than an individual is eligible for employment if he or she has received a waiver but not the waiver information.*

Amends the Health Care Worker Background Check Act. Allows a health care employer to hire an individual with a disqualifying offense if the individual has received a waiver under the Act. Creates a Health Care Worker Registry working group in the Office of the Governor. Makes other changes.

In provisions amending the Health Care Worker Background Check Act, provides that the Department of Public Health may, at the discretion of the Director of Public Health, grant a waiver to an applicant, student, or employee listed on the registry. In provisions concerning an applicant receiving a written notification by the Department of its decision on whether to grant a waiver, removes the exception in cases where a rehabilitation waiver is granted. In provisions concerning the Health Care Worker Registry working group, provides that the Department of Public Health and the Governor's Office shall provide the working group with any relevant aggregate data currently available that is related to the waiver process and its effectiveness. Provides that the working group shall identify any gaps in information currently collected that would inform the working group's efforts and make recommendations to the Governor's Office and the General Assembly about what additional data should be collected to evaluate and monitor the success of the waiver process by July 1, 2017. Makes other changes.

In provisions amending the Health Care Worker Background Check Act, provides that when the Department of Public Health sends an applicant, student, or employee written notification of its decision whether to grant a waiver, the written notification shall include a list of the specific disqualifying offense for which the waiver is being granted not denied. Provides that the Department shall issue additional copies of the written notification upon the applicant's, student's, or employee's request.

In provisions amending the Nursing Home Care Act, provides that after January 1, 2017 the publicly accessible Health Care Worker Registry shall report if an individual is ineligible because of a disqualifying offense and has not received a waiver. Changes the effective date to January 1, 2017

*HB4552
Short Description: AGING-ABUSE RECORDS-DISCLOSURE
Status: P.A. 99-547, eff. 7-15-16
320 ILCS 20/8

Summary
Amends the Adult Protective Services Act. Adds State's Attorney's offices to the list of persons and agencies granted access, upon request, to records concerning reports of abuse, neglect, financial exploitation, or self-neglect. Effective immediately.

HB4562
Short Description: HUMAN RIGHTS ACT-PENALTIES (REAL ESTATE)
Status: P.A. 99-548, eff. 1-1-17
775 ILCS 5/8B-104

Synopsis As Introduced
Amends the Illinois Human Rights Act. Increases the amount of civil penalties for civil rights violations relating to real estate transactions as follows: (i) a maximum of $16,000 (instead of $10,000) if the respondent has not been adjudged to have committed any prior civil rights violation concerning real estate transactions; (ii) a maximum of $42,500 (instead of $25,000) if the respondent has been adjudged to have committed one other civil rights violation concerning real estate transactions during the 5-year period ending on the date of the filing of the current charge; and (iii) a maximum of $70,000 (instead of $50,000) if the respondent has been adjudged to have committed 2 or more civil rights violations concerning real estate transactions during the 7-year period ending on the date of the filing of the current charge.

*HB4603
Short Description: CNTY CD-PUBLIC DEFENDER REPORT; COUNTY BD VOTING
Status: P.A. 99-774, eff. 8-12-16
55 ILCS 5/3-4010 55 ILCS 5/2-1005

Summary:
Amends the Counties Code. Requires Public Defenders in counties with a population under 1,000,000 to report quarterly or monthly as directed by the county board.

Provides that a county board may use an omnibus vote to approve any 2 or more designated ordinances, orders, resolutions, or motions placed into a single voting group. Effective immediately.

HB4683
Short Description: CRIM PRO-APPEAL-DEFENDNT DEATH
Status: P.A. 99-778, eff. 1-1-17
725 ILCS 5/115-4.5 new 725 ILCS 5/Art. 121A new multi

Summary
Amends the Code of Criminal Procedure of 1963. When a prosecutor learns of the death of a defendant prior to final judgement, a certificate of notice of death shall be filed, and the court shall enter an order abating the proceedings ab initio.
Unless otherwise provided by Supreme Court Rule, death of a defendant on direct appeal shall be handled in the following way. 1) When a prosecutor learns of the death of a defendant on direct appeal, he shall promptly notify the other party and file a certificate of notice of death with the reviewing court. 2) Unless the executor or administrator of the defendant's estate files a motion to intervene (based on companion civil case implications?), the reviewing court shall dismiss the direct appeal without disturbing the judgement of guilt. 3) If a timely petition to intervene is filed, the reviewing court shall permit the intervention, and the direct appeal shall proceed in the same manner as if the defendant were alive. Nothing in this Section authorizes post-conviction proceedings to be filed or litigated.

HB4715
Short Description: GOVERNMENT-FOIA
Status: P.A. 99-586, eff. 1-1-17
5 ILCS 140/2 5 ILCS 140/11 & 11.6 new

Summary
Amends the Freedom of Information Act. Allows a person denied access to public records to file an action to enforce a binding opinion issued under section 9.5 of this Act. It allows the court to impose an additional penalty of up to $1,000 for each day the violation continues if: the public body fails to comply with the court's order after 30 days; the court's order is not appealed or stayed; and the court does not grant the public body additional time to comply with a court order to disclose public records. Changes apply to actions filed on or after January 1, 2016. A requester that files an action seeking to enforce a binding opinion will have a rebuttable presumption that the public body willfully and intentionally failed to comply with this Act if: the attorney general issues a binding opinion under section 9.5; the public body does not file for administrative review within 35 days after the binding opinion is served on the public body; and the public body does not comply with the binding opinion within 35 days after it is served on the public body. This presumption may be rebutted by the public body showing that it is making a good-faith effort to comply with the binding opinion, but the compliance was not possible within the 35-day time frame. This section applies to binding opinions of the attorney general requested or issued on or after January 1, 2016.

HB4999
Short Description: WORK PRIVACY SOCIAL MEDIA
Status: P.A. 99-610, eff. 1-1-17
725 ILCS 168/5 820 ILCS 55/10

Summary
Amends the Right to Privacy in the Workplace Act. Makes it unlawful for an employer *or prospective employer* to request or require an employee or applicant to authenticate or access a personal online account in the presence of the employer, to request or require that an employee or applicant invite the employer to join a group affiliated with any personal online account of the employee or applicant, or join an online account established by the employer. Prohibits retaliation against an employee or

applicant for reporting a violation of the Act. Amends the Freedom from Location Surveillance Act to make a complementary cross reference change.
In language providing that certain provisions of the bill do not prohibit or restrict an employer from complying with a duty to screen employees or applicants before hiring or monitoring or retaining employee communications under specified laws if the password, account information, or access sought by the employer relates only to an online account that is supplied or paid for by an employer.

HB5003
Short Description: VETERANS COURTS-MANDATES
Status: P.A. 99-807, eff. 1-1-18
730 ILCS 167/15

Synopsis As Introduced
Amends the Veterans and Servicemembers Court Treatment Act. Provides that the Chief Judge of each judicial circuit shall (rather than may) establish a Veterans and Servicemembers Court program including a format under which it operates under the Act. Effective January 1, 2018.

Comment: Separation of powers problem?

*HB5010
Short Description: ANIMAL ABUSE-EXPOSURE
Status: P.A. 99-782, eff. 8-12-16
510 ILCS 70/3.01

Summary:
Amends the Humane Care for Animals Act. Provides that no owner of a dog or cat that is a companion animal may expose the dog or cat in a manner that places the dog or cat in a life-threatening situation for a prolonged period of time in extreme heat or cold conditions that results in hypothermia, hyperthermia, frostbite, or similar condition as diagnosed by a doctor of veterinary medicine.

HB5017
Short Description: JUV CT-EXPUNGE-NON ADJUD&MIS
Status: P.A. 99-835, eff. 1-1-17
705 ILCS 405/5-915

Summary
Amends the Juvenile Court Act of 1987. Provides that whenever a person has been arrested, charged, or adjudicated delinquent for an incident occurring before his or her 18th birthday that if committed by an adult would be an offense, the person may petition the court at any time for expungement of law enforcement records and juvenile court records relating to the incident and upon termination of all juvenile court proceedings relating to that incident, the court shall order the expungement of all records in the possession of the Department of State Police, the clerk of the circuit court, and law enforcement agencies relating to the incident, but only in any of the following circumstances: (1) the minor was arrested and no petition for delinquency was filed with the clerk of the circuit court; (2) the minor was charged with an offense and the petition or petitions were dismissed without a finding of delinquency;

(3) the minor was charged with an offense and was found not delinquent of that offense; (4) the minor was placed under supervision, and the order of supervision has since been successfully terminated; or (5) the minor was adjudicated for an offense which would be a Class B misdemeanor, Class C misdemeanor, or a petty or business offense if committed by an adult

*HB5104
Short Description: IDOC Medical/Mental Hlth Employees
Status: Passed both Houses; Amend Veto
730 ILCS 5/3-2-2

Summary
Amends the Unified Code of Corrections. Provides that on and after the effective date of the amendatory Act, the Department of Corrections may not let bids for contracts that would have the effect of reducing the number of Department employees, whose employment is related to the provision of medical or mental health services, lower than the number of Department employees on January 1, 2016 whose employment is related to the provision of medical or mental health services. Effective immediately.

Amendatory Veto
On page 13, by replacing lines 8 through 14 with "Act of the 99th General Assembly, before letting bids for contracts that would have the effect of reducing the number of Department employees whose employment is related to the provision of medical or mental health services, the Department shall prepare a cost comparison between the projected expenses if the work continued to be performed by Department employees and the projected expenses if a third party provided such services and shall allow for a reasonable time to meet with the affected employees or their labor organization representatives and discuss alternatives.".

HB5402
Short Description: LICENSE PLATE RENEWAL
Status: P.A. 99-809, eff. 1-1-17
625 ILCS 5/3-802

Summary
Amends the Illinois Vehicle Code. Provides that beginning with the 2018 registration year, any individual who has registration issued for certain vehicles and qualifies for a special license plate under certain specified Sections of the Code may reclass his or her registration upon acquiring a specified special license plate without a replacement plate fee or registration sticker cost.

HB5472
Short Description: VICTIM & WITNESS RIGHTS
Status: P.A. 99-671, eff. 1-1-17
740 ILCS 45/2 725 ILCS 120/

Summary

Amends the Crime Victims Compensation Act. Includes within the scope of the term "victim" a person who will be called as a witness by the prosecution to establish a necessary nexus between the offender and the violent crime.
Amends the Rights of Crime Victims and Witnesses Act. Changes the definition of "witness" to include a person who will be called by the prosecution to give testimony establishing a necessary nexus between the offender and the violent crime.

HB5538
Short Description: DOM VIOLENCE-POLICE TRAINING
Status: P.A. 99-810, eff. 1-1-17
725 ILCS 5/112A-27 750 ILCS 60/301.1

Summary
Amends the Code of Criminal Procedure of 1963 and the Illinois Domestic Violence Act of 1986. Provides that in developing arrest procedure policies in domestic violence situations, each law enforcement agency shall (instead of "is encouraged to") consult with community organizations and other law enforcement agencies with expertise in recognizing and handling domestic violence incidents. Provides that in the initial training of new recruits and every 5 years in the continuing education of law enforcement officers, every law enforcement agency shall provide training to aid in understanding the actions of domestic violence victims and abusers and to prevent further victimization of those who have been abused, focusing specifically on looking beyond the physical evidence to the psychology of domestic violence situations, such as the dynamics of the aggressor-victim relationship, separately evaluating claims where both parties claim to be the victim, and long-term effects. Provides that the Law Enforcement Training Standards Board shall formulate and administer the training as part of the current programs for both new recruits and active law enforcement officers. Provides that the Board shall formulate the training by July 1, 2017, and implement the training statewide by July 1, 2018. Provides that in formulating the training, the Board shall work with community organizations with expertise in domestic violence to determine which topics to include. Provides that the Law Enforcement Training Standards Board shall oversee the implementation and continual administration of the training.

*HB5540
Short Description: FIRST 2016 GENERAL REVISORY
Status: P.A. 99-642, eff. 7-28-16
Includes 625 ILCS multi; 720 ILCS multi; 725 ILCS multi; 730 ILCS multi

Synopsis As Introduced
Creates the First 2016 General Revisory Act. Combines multiple versions of Sections amended by more than one Public Act. Renumbers Sections of various Acts to eliminate duplication. Corrects obsolete cross-references and technical errors. Makes stylistic changes. Effective immediately.

HB5551
Short Description: DCFS-FICTIVE KIN
Status: P.A. 99-836, eff. 1-1-17
20 ILCS 505/7 20 ILCS 505/6a 705 ILCS 405/2-13

Summary
Amends the Children and Family Services Act. In provisions requiring the Department of Children and Family Services to develop a case plan for each client for whom the Department is providing placement services, requires the Department to ensure that incarcerated parents are able to participate in case plan reviews via teleconference or videoconference; and requires the case plan to address the tasks that must be completed by an incarcerated parent and other matters. Requires the Department to use the child's best interest standard under the Juvenile Court Act of 1987 when considering a placement that will permit the child to maintain a meaningful relationship with his or her parents. Expands the definition of "fictive kin" to include any individual, unrelated by birth or marriage, who is the current foster parent of a child in the custody or guardianship of the Department pursuant to the Act and the Juvenile Court Act of 1987, if the child has been placed in the home for at least one year and has established a significant and family-like relationship with the foster parent, and the foster parent has been identified by the Department as the child's permanent connection, as defined by Department rule.

Amends the Juvenile Court Act of 1987. In provisions concerning a petition for the termination of parental rights involving minors who are committed to the care of the Department, provides that such a petition shall be filed unless a good cause exists that filing the petition is contrary to the child's best interests. Lists a parent's incarceration or prior incarceration, under certain conditions, as a good cause for not filing a petition for the termination of parental rights. Removes language concerning transitional rules for children living in foster care.

Amends the Adoption Act. Removes language that provides that a child living in foster care for 15 months out of any 22-month period is a ground for finding a parent to be unfit.

HB5572
Short Description: SEX REGISTRATION-TASK FORCE
Status: P.A. 99-873, eff. 1-1-17
20 ILCS 3930/15 new

Summary
Amends the Illinois Criminal Justice Information Act. Appoints various members to the Sex Offenses and Sex Offender Registration Task Force, including the Executive Director of the Illinois Criminal Justice Information Authority, legislators, IDOC & DJJ representative, 2 academics or researchers who have studied issues related to adult sex offending, a representative of a legal organization that works with adult sex offenders who focus on the collateral consequences of conviction and registration, 2 treatment providers who specialize in adult treatment, a treatment provider who specializes in working with victims of sex offenses, 2 representatives from community-based organizations that work with adults convicted of sex offenses on re-entry, a statewide organization that represents or coordinates services for victims of sex offenses, a representative of a statewide organization that represents or is comprised of individuals convicted as adults of a sex offense who are currently on a registry*, a public defender (appointed by ICJIA), and an appellate defender (appointed by ICJIA).* Provides that the Illinois Criminal Justice Information Authority may consult, contract, work in junction with, and obtain any information from any individual, agency, association, or research institution deemed appropriate by the Authority. Is sues to review include risk assessment, evidence-based practices and collateral consequences of registration. Report due by January 1, 2018. Provides the Task Force provision is repealed on January 1, 2019.

HB5593
Short Description: OPIOID ADDICTION TREAT ED
Status: P.A. 99-553, eff. 1-1-17
20 ILCS 301/20-25 new

Synopsis As Introduced
Amends the Alcoholism and Other Drug Abuse and Dependency Act. Provides that all programs serving persons with substance use issues licensed by the Department of Human Services under the Act must provide educational information concerning treatment options for opioid addiction, including the use of a medication for the use of opioid addiction, recognition of and response to opioid overdose, and the use and administration of naloxone, to clients identified as having or seeking treatment for opioid addiction. Provides that the Department shall develop educational materials that are supported by research and updated periodically that must be used by programs to comply with this requirement.

HB5594
Short Description: DRUG COURT-OPIOID ABUSE
Status: P.A. 99-554, eff. 1-1-17
730 ILCS 166/25 730 ILCS 166/35

Summary
Amends the Drug Court Treatment Act. Provides that if the defendant needs treatment for opioid abuse or dependence, the court may not prohibit the defendant from participating in and receiving medication assisted treatment under the care of a physician licensed in this State to practice medicine in all of its branches. Provides that drug court participants may not be required to refrain from using medication assisted treatment as a term or condition of successful completion of the drug court program.

*HB5613
Short Description: TASK FORCE-CRIMINAL DISCOVERY
Status: P.A. 99-874, eff. 8-22-16
New Act

Summary
Creates the Law Enforcement Information Task Force Act. Provides that the Law Enforcement Information Technology Task Force (within the Illinois Criminal Justice Information Authority) shall analyze both the criminal discovery process and the process of information sharing between law enforcement agencies to strategize for the possible creation of a standardized statewide case records management system or other standardized information sharing technology system to provide for a more efficient criminal discovery process.
Members include a Public Defender representative from Cook County, and the IPDA (Governor selects IPDA representative). Members elect the chair. No compensation provided. The Task Force shall issue a final report to the Governor and General Assembly on or before January 10, 2017. Provides that the Act is repealed on January 11, 2017.
Provides that the Illinois Criminal Justice Information Authority shall work with State and local criminal justice agencies to promote information sharing systems through its access to technical expertise and its grant-making powers for technology information projects. Provides that the Illinois Criminal Justice

Information Authority shall provide staff to serve as a liaison between the Law Enforcement Information Task Force and its stakeholders to provide guidance in criminal justice information sharing, best practices and strategies, and to effectuate the mission of the Task Force. Provides that the chair of the Task Force shall convene the first meeting of the Task Force on or before August 31, 2016. Provides that the Task Force shall meet at least twice a month thereafter until it completes its duties, or until December 31, 2016, whichever is earlier. Provides that the Task Force shall provide a preliminary report to the Governor and General Assembly on or before December 15, 20016 if the final report is not completed by then. Provides that the Task Force shall issue a final report to the Governor and General Assembly on or before January 15, 2017 Provides the repeal date on the Act is February 1, 2017. Effective immediately.

Comment: Initiative of John Corrigan, a lobbyist (Human Rights Watch re JLWOP). Modeled on Colorado TF, where defense counsel formerly obligated to pay a fee for discovery. Is not this what IIJIS is for?

HB5651
Short Description: VEH CD-REG EXPIRATION-BIRTHDAY
Status: P.A. 99-644, eff. 1-1-17
625 ILCS 5/3-414

Summary
Amends the Illinois Vehicle Code. Allows the Secretary of State to require an owner of a motor vehicle of the first division or a motor vehicle of the second division weighing not more than 8,000 pounds to select his or her birthday as the motor vehicle's registration expiration date. Provides that if the motor vehicle has more than one registered owner, the owners may select one registered owner's birthday as the date of registration expiration. Provides the Secretary of State may adopt any rules the Secretary deems necessary.

HB5656
Short Description: DHFS-COURTS-VISITATION; Great Grandparents
Status: P.A. 99-838, eff. 1-1-17
20 ILCS 505/35.8 20 ILCS 505/35.9 new

Summary
Amends the Department of Children and Family Services Act. Requires the Department of Children and Family Services to make reasonable efforts and accommodations to provide for visitation privileges to a non-custodial grandparent (now) or great-grandparent (new) of a child who is in the care and custody of the Department. Provides that any visitation privileges provided shall be separate and apart from any visitation privileges provided to a parent of the child. Requires the Department to provide visitation privileges only if doing so is in the child's best interest, taking into consideration certain factors set out in the Juvenile Court Act of 1987 and other additional factors as specified. Provides that any visitation privileges provided shall automatically terminate upon the child leaving the care or custody of the Department Provides that if the Department determines that a grandparent or great-grandparent is inappropriate to serve as a visitation resource and denies visitation, the Department shall: (i) document the basis of its determination and maintain the documentation in the child's case file and (ii) inform the grandparent or great-grandparent of his or her right to a clinical review in accordance with Department

rules and procedures. Provides that the Department may adopt any rules necessary to implement the provisions of the bill.

*HB5665
Short Description: DCFS-FOSTER CARE-ACTIVITIES
Status: P.A. 99-839, eff. 8-19-16
20 ILCS 505/7.3a new

Summary
Amends the Children and Family Services Act. Provides that each child who comes into the care and custody of the Department of Children and Family Services is fully entitled to participate in appropriate extracurricular, enrichment, cultural, and social activities in a manner that allows that child to participate in his or her community to the fullest extent possible. Requires caregivers to use the reasonable and prudent parent standard in determining whether to give permission for a child in out-of-home care to participate in appropriate extracurricular, enrichment, cultural, and social activities. Requires caregivers to consider certain factors when using the reasonable and prudent parent standard, including: (i) the child's age, maturity, and developmental level to promote the overall health, safety, and best interests of the child; and (ii) the importance and fundamental value of encouraging the child's emotional and developmental growth gained through participation in activities in his or her community. Provides that a caregiver is not liable for harm caused to a child in out-of-home care who participates in an activity approved by the caregiver. Grants the Department rulemaking authority. Effective immediately.

HB5723
Short Description: VEH CD-NO INS-PETTY OFFENSE
Status: P.A. 99-613, eff. 1-1-17
625 ILCS 5/3-707

Synopsis As Introduced
Amends the Illinois Vehicle Code. Provides that a person convicted of operating a motor vehicle without an insurance policy shall be guilty of a petty offense (rather than a business offense), unless the person has been convicted of this same offense 3 or more times.

Comment: Petty offense fine is max $1,000 or amount specified in offense statute. Business offense has fine max as specified in offense statute. 730 ILCS 5/5-4.5-80 & -75.

HB5771
Short Description: CD CORR-SENTENCING OF MINORS; No JLWOP
Status: P.A. 99-875, eff. 1-1-17
730 ILCS 5/5-4.5-105 730 ILCS 5/5-8-1

Synopsis As Introduced
Amends the Unified Code of Corrections. Corrects a cross reference in the provision concerning sentencing of persons who were under the age of 18 at the time of the commission of an offense. Provides that certain mandatory natural life sentencing provisions for criminal sexual assault,

aggravated criminal sexual assault, and predatory criminal sexual assault of a child apply only to a person who has attained the age of 18 years at the time of the commission of the offense.

Comment: Consistent with Miller v. Alabama principles.

HB5781
Short Description: DISPOSAL OF MEDS OF DECEASED
Status: P.A. 99-648, eff. 1-1-17
20 ILCS 2610/40 new 50 ILCS 705/10.19 new 55 ILCS 5/3-3045 new 210 ILCS 150/5 210 ILCS 150/18 new

Summary
Amends the Safe Pharmaceutical Disposal Act. Provides that that police officers, coroners, and medical examiners may dispose of unused medications found at the scene of a death after consulting with any law enforcement agency investigating the death. Limits types of medications of which may be disposed.. Amends the State Police Act, the Illinois Police Training Act, the Counties Code, Medical Practice Act of 1987, and the Nurse Practice Act making conforming changes.
Provides that prior to disposal of unused medication collected as evidence in a criminal investigation, a State Police officer, police officer, coroner, or medical examiner shall photograph the unused medication and its container or packaging, if available; document the number or amount of medication to be disposed; and include the photographs and documentation in the police report, coroner report, or medical examiner report. Further provides if an autopsy is performed as part of a death investigation, no medication seized shall be disposed of until after a toxicology report is received by the entity requesting the report.

*HB5805
Short Description: LIMITATION-THEFT-EXPLOIT ELDER
Status: P.A. 99-820, eff. 8-15-16
720 ILCS 5/3-5 720 ILCS 5/3-6

Synopsis As Introduced
Amends the Criminal Code of 2012. Provides that a prosecution for theft of property (rather than involving real property) exceeding $100,000 in value or financial exploitation of an elderly person or a person with a disability may be commenced within 7 years of the last act committed in furtherance of the crime. Effective immediately.

Note: Statute of Limitations change cannot retroactively resurrect an expired limitations period. Stogner v. California, 539 U.S. 609 (2003)

*HB5808
Short Description: DRONE TASK FORCE APPT
Status: P.A. 99-649, eff. 7-28-16
20 ILCS 5065/15 20 ILCS 5065/20

Summary

Amends the Unmanned Aerial System Oversight Task Force Act. Provides for the appointment of members to the Unmanned Aerial System Task Force also by the General Assembly. Includes a member of a statewide broadcasters association. Provides that the Task Force shall submit a report with recommendations to the Governor and General Assembly no later than July 1, 2017. Provides that the Act is repealed on September 1, 2017. Effective immediately.

*HB5910
Short Description: FED LAW ENFORCEMENT AGENCIES
Status: P.A. 99-651, eff. 7-28-16
720 ILCS 5/2-13 745 ILCS 22/5 50 ILCS 705/3

Summary
Amends the Criminal Code of 2012. Changes references of various federal law enforcement agencies from their previous names to their current names.

Amends the Illinois Police Training Act. Removes the Special Agent in Charge of the Springfield, Illinois, division of the Federal Bureau of Investigation from the Illinois Law Enforcement Training Standards Board. Makes this change effective upon becoming law.

HB5912
Short Description: BICYCLES-RIGHT OF WAY
Status: P.A. 99-785, eff. 1-1-17
625 ILCS 5/11-1502

Summary
Amends the Illinois Vehicle Code. Provides that a person riding a bicycle has all the rights applicable to a driver of a vehicle, including those regarding a vehicle's right-of-way under the Code.

Comment: Meant to clarify inconsistent appellate rulings classifying bicyclists as pedestrians, vehicles, or neither. People v. Isaacson, 288 Ill. App.3d 560 (4th D. 1997); Bekele v. Ngo, 236 Ill. App.3d 330 (1st D. 1992). 625 ILCS 5/11-1512[c] should be read together with 625 ILCS 5/11-1205.

HB5973
Short Description: OCCUPATION LIC-CRIM CONVICTION
Status: P.A. 99-876, eff. 1-1-17
225 ILCS multi

Summary
Amends the Funeral Directors and Embalmers Licensing Code, the Illinois Roofing Industry Licensing Act, and the Barber, Cosmetology, Esthetics, Hair Braiding, and Nail Technology Act of 1985. Reduces occupational and business licensing barriers based on a criminal record for the professions of barbering, cosmetology, esthetics, hair braiding, nail technology, roofing and funeral services. Currently a person with any felony or a directly related misdemeanor may be denied a license. This bill removes misdemeanors as a basis for denying a license. It also has IDFPR limit denials to offenses that are directly related, as defined in the bill, to the practice of each of the licensed professions. IDFPR would also have

to consider these directly related offenses in light of other mitigating factors, similar to EEOC's guidance. Finally, it provides an annual reporting requirement, effective 2018 for clarity on licensing policies concerning applicants with a record. Effective January 1, 2017.

HB6006
Short Description: VEH CD-DISABLED VEHICLES
Status: P.A. 99-681, eff. 1-1-17
625 ILCS 5/11-701 625 ILCS 5/11-907.5 new

Summary
Amends the Illinois Vehicle Code. Provides that a driver of a vehicle approaching a disabled vehicle, with lighted hazard lights, on a highway of at least 4 lanes, of which at least 2 are proceeding in the same direction, shall, proceeding with due caution, make a lane change into a lane not adjacent to the disabled vehicle or, if changing lanes would be impossible or unsafe, reduce the speed of the vehicle and maintain a safe speed for the road conditions. Provides that a violation of this provision shall be a petty offense.

HB6010
Short Description: VEHICULAR ENDANGERMENT
Status: P.A. 99-656, eff. 1-1-17
720 ILCS 5/12-5.02 was 720 ILCS 5/12-2.5

Summary
Amends the Criminal Code of 2012. Provides that the offense of vehicular endangerment includes striking a motor vehicle by causing an object to fall from an overpass or other elevated location above or adjacent to and above a highway (rather than just an overpass) in the direction of a moving motor vehicle with the intent to strike a motor vehicle while it is traveling upon a highway in this State.

*HB6037
Short Description: CD CORR-MITIGATION-MENTAL ILL
Status: P.A. 99-877, eff. 8-22-16
730 ILCS 5/5-5-3.1

Synopsis As Introduced
Amends the Unified Code of Corrections. Provides that the following ground shall be accorded weight in favor of withholding or minimizing a sentence of imprisonment that at the time of the offense, the defendant was suffering from a serious mental illness which, though insufficient to establish the defense of insanity, substantially affected his or her ability to understand the nature of his or her acts or to conform his or her conduct to the requirements of the law. Effective immediately.

Comment: codifies case law. People v. Heider, 231 Ill. 2d 1, May 22, 2008, OVERVIEW: Imposition of a non-minimum term of imprisonment on defendant upon finding that his mental retardation made him dangerous was error, as the record did not support a finding of his dangerousness and it had been relied upon to increase the term of sentence; retardation was a mitigating factor under 730 Ill. Comp. Stat. Ann. 5/5-5-3.1(a) (13) (2002).

*HB6093
Short Description: VEH CD-AUTO TRANSPORTER-LENGTH
Status: P.A. 99-717, eff. 8-5-16
625 ILCS 5/multi

Synopsis As Introduced
Amends the Illinois Vehicle Code. Provides a definition for "automobile transporter" and "backhaul." Amends the definition for "stinger-steered semitrailer" and "truck tractor." Provides that the length of a stinger-steered semitrailer specifically designed to transport motor vehicles or an automobile transporter cannot exceed 80 feet (as opposed to 75 feet), with an overhang of less than 4 feet (as opposed to 3 feet) and a rear overhang of less than 6 feet (as opposed to 4 feet). Provides an automobile transporter of these lengths can also be used when transporting other cargo or general freight on a backhaul.
Further amends the Illinois Vehicle Code. Defines "covered heavy duty tow and recovery vehicle", "towaway trailer transporter combination", and "trailer transporter towing unit". Provides the Code Chapter governing weight of vehicles applies to fire apparatus, but maintains the fire apparatus Code exemption for size and load. Provides on Class I and Class II highways that: (1) a truck in transit transporting 3 trucks coupled together by the triple saddlemount method may not exceed 97 feet overall dimension (rather than 75 feet) and (2) a towaway trailer transporter combination may not exceed 82 feet overall dimension. Provides towaway trailer transporter combinations, with no overall length limitations, with certain exceptions, have unlimited access to points of loading, unloading, or delivery to or from a manufacturer, distributor, or dealer. Exempts from the Code's general wheel and axle load and gross weight formula: (1) a covered heavy duty tow and recovery vehicle, (2) a vehicle or combination of vehicles that uses natural gas or propane gas as a motor fuel may exceed the Code's weight limitations by up to 2,000 pounds on all highways (rather than providing an exception for interstate highways), (3) an emergency vehicle that is a vehicle designed to be used under emergency conditions to transport personnel and equipment, and used to support the suppression of fires and mitigation of other hazardous situations, may not exceed 86,000 pounds gross weight, or any of the following weight allowances: (i) 24,000 pounds on a single steering axle; (ii) 33,500 pounds on a single drive axle; (iii) 62,000 pounds on a tandem axle; or (iv) 52,000 pounds on a tandem rear drive steer axle, and (4) a bus, motor coach, or recreational vehicle may carry a total weight of 24,000 pounds on a single axle, but may not exceed other weight provisions of the Code. Provides the covered heavy duty tow and recovery vehicle license plate must cover the operating empty weight of the covered heavy duty tow and recovery vehicle only. Provides the total allowance for vehicles that uses natural gas or propane gas as a motor fuel is calculated by an amount that is equal to the difference between the weight of the vehicle attributable to the natural gas or propane gas tank and fueling system carried by the vehicle, and the weight of a comparable diesel tank and fueling system. Provides a vehicle with a fully functional APU shall be allowed an additional 550 pounds (rather than 400 pounds) or the certified unit weight, whichever is less. Relocates a provision allowing a State or local agency to authorize the issuance of excess size or weight permits for vehicles and loads, involving the transporting of fluid milk products, that are divisible and that can be carried, when divided, within the existing size or weight maximum specified in the Code; but removes the limitations on the permit that a single axle may not exceed 20,000 pounds, a gross weight may not exceed 80,000 pounds, the permit issued by the State does not apply to interstate highways, and that all road and bridge postings must be obeyed. Repeals provision setting the fee for special permits to transport raw milk at $12.50 per quarter and $50 annually. Effective immediately.

HB6109
Short Description: ORDERS OF PROTECTION: E-FILING
Status: P.A. 99-718, eff. 1-1-17
705 ILCS 5/7.5 new 750 ILCS 60/202

Synopsis As Introduced
Amends the Supreme Court Act. Provides that the Supreme Court *may* establish a pilot program for the filing of petitions for temporary orders of protection by electronic means and for the issuance of such orders by audio-visual means. Provides that the administrative director of the courts shall maintain an up-to-date and publicly available listing of the sites, if any, at which petitions for ex parte temporary orders of protection may be filed, and at which electronic appearances in support of such petitions may be made. Provides that in developing a pilot program, the administrative director shall strive for a program that is regionally diverse and takes into consideration, among other things, the availability of public transportation, population density, and the availability of facilities for conducting the program. Amends the Illinois Domestic Violence Act of 1986. Defines terms and provides substantive and procedural requirements for the pilot program.

HB6131
Short Description: DRIVER ED-TRAFFIC STOP-POLICE
Status: P.A. 99-720, eff. 1-1-17
105 ILCS 5/27-24.2 105 ILCS 5/27-24.2a new 625 ILCS 5/6-419

Synopsis As Introduced
Amends the School Code and the Illinois Vehicle Code. Provides that a driver education course (whether offered by a public school, a non-public school, or a driver training school) shall include instruction concerning law enforcement procedures for traffic stops, including a demonstration of the proper actions to be taken during a traffic stop and appropriate interactions with law enforcement.

*HB6167
Short Description: SUFFRAGE RIGHTS AT SEVENTEEN
Status: P.A. 99-722, eff. 8-5-16
10 ILCS 5/5-8.5 new 10 ILCS 5/3-6

Summary
Amends the Election Code. Provides that an individual who will be 18 years of age or older at the next general election may sign and circulate candidate petitions and register to vote, and shall be deemed competent to execute and attest to any voter registration forms, with the registration held in abeyance by the appropriate election authority until such time as that individual attains the required age to vote.

Further amends the Election Code. Provides that a person who is 17 years old on the date of a caucus or consolidated primary election and who is other qualified to vote is qualified to vote at that consolidated primary if that person will be 18 years old on the date of the immediately following consolidated election for which candidates are nominated at that primary. Provides that an individual who is 17 years of age, will be 18 years of age on the date of the immediately following general or consolidated election,

and is otherwise qualified to vote shall be deemed competent to circulate a nominating petition or a petition proposing a public question. Makes conforming changes. Effective immediately.

HB6190
Short Description: ACCELERATED RES CT-EXTENDS
Status: P.A. 99-724, eff. 1-1-17
730 ILCS 169/multi

Synopsis As Introduced
Amends the Accelerated Resolution Court Act. Changes the name of the Act to the Accelerated Resolution Program Act. Includes for eligibility for the Program, a defendant charged with: (1) a traffic offense, except for any offense involving fleeing or attempting to elude a peace officer or aggravated fleeing or attempting to elude a peace officer, driving under the influence, or any offense that results in bodily harm, or (2) a Class 4 felony violation of the Illinois Controlled Substances Act. Deletes provision that once referred to the Program by the Cook County Sheriff or his or her designee, written notice shall be given by the Sheriff to the Presiding Judge of the Criminal Division of the Circuit Court of Cook County. Deletes provision that if a person is released on his or her own recognizance, the conditions of the release shall be that he or she shall file written notice with the clerk of the court before which the proceeding is pending of any change in his or her address within 24 hours after the change. Deletes provision that the address of a defendant who has been released on his or her own recognizance shall at all times remain a matter of public record with the clerk of the court. Provides that the Act is repealed on June 30, 2019 (rather than June 30, 2017).

HB6200
Short Description: CD CORR-INMATE CALLS-FEES
Status: P.A. 99-878, eff. 1-1-17
730 ILCS 5/3-4-1

Summary
Amends the Unified Code of Corrections. Provides that beginning January 1, 2018, the Department of Central Management Services shall contract with the qualified vendor who proposes the lowest per minute rate not exceeding 7 cents per minute for debit, prepaid, collect calls and who does not bill to any party any tax, service charge, or additional fee exceeding the per minute rate. Retains language that moneys received by the Department of Corrections as commissions from inmate collect call telephone systems shall be deposited into the Department of Corrections Reimbursement and Education Fund. Effective January 1, 2017.

HB6291
Short Description: JUV COURT-PROBATION
Status: P.A. 99-879, eff. 1-1-17
705 ILCS 405/5-715 705 ILCS 405/5-710

Summary
Amends the Juvenile Court Act of 1987. Provides that the period of probation or conditional discharge of a juvenile shall be a period of at least 5 years, or until the minor has attained the age of 21, whichever is

less, only if the juvenile is found to be guilty of first degree murder, and not if the juvenile is found to be guilty of a Class X felony or a forcible felony.
Further amends the Juvenile Court act of 1987. Provides that in no event shall a guilty minor be committed to the Department of Juvenile Justice for an offense that is a Class 3 or Class 4 felony violation of the Illinois Controlled Substances Act unless the commitment occurs upon a third or subsequent judicial finding of a violation of probation for substantial noncompliance with court ordered treatment or programming.
Provides that *the period of probation for a minor* who is found guilty of aggravated criminal sexual assault, criminal sexual assault, or aggravated battery with a firearm shall be at least 36 months. Provides that the period of probation for a minor who is found to be guilty of any other Class X felony shall be at least 24 months. Provides that the period of probation for a Class 1 or Class 2 forcible felony shall be at least 18 months. Provides that if a juvenile is subject to probation for various offenses the court shall schedule hearings to determine whether it is in the best interest of the minor and public safety to terminate probation after the minimum period of probation has been served. Provides that in such a hearing, there shall be a rebuttable presumption that it is in the best interest of the minor and public safety to terminate probation. Effective January 1, 2017.

Comment: Retroactive application to those on probation prior to 1-1-17? See general savings clause @ 5 ILCS 70/4.

*HB6303
Short Description: CRIM CD-FIREARMS TRAFFICKING
Status: P.A. 99-885, eff. 8-23-16
720 ILCS 5/24-3B new 730 ILCS 5/5-5-3

Summary
Amends the Criminal Code of 2012. Creates the offense of firearms trafficking. Provides that a person commits the offense when he or *she has not been issued a currently valid Firearm Owner's Identification* Card and knowingly brings, or causes to be brought, into the State, a firearm or firearm ammunition, or both, for the purpose of sale, delivery, or transfer to any other person or with the intent to sell, deliver, or transfer the firearm or firearm ammunition to any other person. Provides that firearms trafficking is a Class 1 felony for which the person, if sentenced to a term of imprisonment, shall be sentenced to not less than 4 years and not more than 20 years. Provides that firearms trafficking by a person who has been previously convicted of firearms trafficking, gunrunning, or a felony offense for the unlawful sale, delivery, or transfer of a firearm or firearm ammunition in this State or another jurisdiction is a Class X felony.
Provides that the offense of firearms trafficking does not apply to: (1) a person exempt under the Firearm Owners Identification Card Act from the requirement of having possession of a Firearm Owner's Identification Card previously issued in his or her name by the Department of State Police in order to acquire or possess a firearm or firearm ammunition; (2) a common carrier under the exemption from unlawful use of weapons violations under the Criminal Code of 2012; or (3) a non-resident who may lawfully possess a firearm in his or her resident state

Amends the Unified Code of Corrections. Provides that a period of probation, a term of periodic imprisonment or conditional discharge *shall not be imposed when the person has been found guilty of firearms trafficking involving both a firearm and firearm ammunition*. Provides that the court shall sentence the offender to not less than the minimum term of imprisonment for the offense. Effective immediately.

*HB6324
Short Description: CRIM-SENTENCING COMMISSION
Status: P.A. 99-880, eff. 8-22-16
20 ILCS 2635/3

Synopsis As Introduced
Amends the Illinois Uniform Conviction Information Act. Provides that the Sentencing Policy Advisory Council will provide analysis and research to assist in the administration of criminal laws. Effective immediately.

*HB6325
Short Description: CD CORR-SPAC MEMBERS
Status: P.A. 99-533, eff. 7-8-16
730 ILCS 5/5-8-8

Synopsis As Introduced
Amends the Unified Code of Corrections. Deletes provision that 2 sitting judges shall serve on the Illinois Sentencing Policy Advisory Council. Provides that the retired judges on the Council shall be selected by certain other members of the Council (rather than by the Chief Justice of the Illinois Supreme Court). Effective immediately.

HB6328
Short Description: CRIM ID-EXPUNGEMENT&SEALING
Status: P.A. 99-881, eff. 1-1-17
20 ILCS 2630/5.2 705 ILCS 405/5-915

Summary
Amends the Criminal Identification Act. It no longer precludes a person with a conviction history from expunging a new arrest that didn't lead to a conviction. It waives fees for adult petitioners who obtain a court order (in forma pauperis petition). The bill institutes a Cook County fee waiver pilot program that would waive fees for sealing and expungement for one year.

Amends the Juvenile Court Act of 1987. Deletes provision that a person whose juvenile records are to be expunged shall pay the clerk of the circuit court a fee equivalent to the cost associated with expungement of records by the clerk and the Department of State Police.

HB6331
Short Description: FOID-REVOKE-ORDER OF PROTECT
Status: P.A. 99-787, eff. 1-1-17
430 ILCS 65/multi 30 ILCS 65/8.2 rep.

Summary

Amends the Firearm Owners Identification Card Act. Provides that the Department of State Police shall provide notice of the revocation of a person's Firearm Owner's Identification Card for being subject to an existing order of protection to all law enforcement agencies with jurisdiction to assist with the seizure of the person's Firearm Owner's Identification Card.

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Cook County Ordinance 16-2631, eff 1-1-17
ANIMAL ABUSE REGISTRY; Sec, 46-38 to 46-45 of Cook County Code
Summary:
Upon " conviction" (includes supervision) after effective date, of Cook County resident for predicate animal abuse offense (510 ILCS 70/3.01 Cruel Treatment; 3.02 Aggravated Cruelty; 3.03 Animal Torture; 3.03-1 Depiction of Animal Cruelty; 720 ILCS 5/48.1 Dog Fighting), requirement for Sheriff's website registration for 15 years. $125 registration fee. Change of address notification within 5 days. Current pets of registrant must be transferred
Retroactive application to out of county folks who move into Cook County.
Animal shelters, Pet sellers, etc. barred from selling pets to registrants.
Penalties: Failure to register (fine up to $2,000); offender who acquires animal (except a service animal) – fine up to $5,000; Animal Shelter/Pet Seller who transfers animal to an offender - $1,000 first offense; $2,000 for 2d offense; fine for $5,000 for 3d +).
Applicability: All Cook County, except areas governed by an ordinance of another governmental entity.

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Note: Within the past year, the State Police mandated 911 answering points should retain storage media for a minimum of 90 days, per Title 83 Admin Code sec. 1325.415 (m). It implemented P.A. 99-006, eff. 1-1-16.
Retention of some otherwise not regulated records (PODs, etc.) governed by one's Local Records Commission. Title 44 Admin Code sec. 4500.10 (Cook County); 4000.10 downstate.
Retention of Officer-worn body camera recordings is mandated for 90 days (50 ILCS 706/10-20).

Note: Local Records Commission not pressing CPD for records destruction schedules. Last one done in the 1990's. "No public record, except as otherwise provided by law, shall be disposed of by any officer or agency unless written approval of the Commission is first obtained. Public record defined very broadly in Title 44, Admin Code, sec. 4500.20.
A. If camera grant through Illinois Law Enforcement Training Standards Board, in-car videos must be stored for 2 years. 50 ILCS 707/15. ILETS FOIA'd 10/18/16 re Chicago.
CPD Special Order re in-car videos provides for a 90-day retention period.
Officer-worn body camera grants. No retention period mentioned in 50 ILCS 707/20.
Officer-worn Body Camera Act (50 ILCS 706/10-1 et seq) provides for a 90-day retention period, unless flagged. CPD Special Order likewise, unless flagged.
OEMC Police Observation Device (POD) retention period set by CPD order only. Special Order S02-04-01. 72-hours for non-wireless and 15 days for wireless PODs.

STATUTORY COURT FEE TASK FORCE

Illinois Court Assessments

Findings and Recommendations for Addressing Barriers to Access to Justice and Additional Issues Associated with Fees and Other Court Costs in Civil, Criminal, and Traffic Proceedings

June 1, 2016

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I. Executive Summary

Illinois imposes a dizzying array of filing fees on civil litigants and court costs on defendants in criminal and traffic cases. Skyrocketing fees in civil cases in recent years have effectively priced many of our state's most economically vulnerable citizens out of the opportunity to participate in the court system. Similar increases in court costs for criminal and traffic proceedings now often result in financial impacts that are excessive for the offense in question and disproportionate to the fines that are intended to impose an appropriate punishment for the offense. In virtually all civil, traffic, and criminal proceedings, wide county-to-county variations in the fees and costs for the same type of proceedings injects additional arbitrariness and unfairness into the system.

Solutions to these problems have been identified. The Access to Justice Act created the Statutory Court Fee Task Force (hereafter "Task Force") - with members appointed by representatives of all three branches of Illinois government and both political parties - to study the current system of fees, fines, and other court costs (collectively, "assessments") and propose recommendations to the Illinois General Assembly and the Illinois Supreme Court to address this growing problem. Drawing upon the broad and varied experience of its members, whose numbers include legislators, judges, lawyers, and court clerks, the Task Force developed the package of recommendations contained in this Report. The members of the Task Force unanimously support adoption and implementation of these recommendations.

The recommendations address the problems summarized in four key findings by the Task Force presented below. The Task Force developed guiding principles, also summarized below, to articulate a comprehensive and internally consistent philosophy for addressing the findings. The Task Force eventually developed, refined, and finalized six recommendations that collectively will simplify the imposition, collection, and distribution of assessments while making them more transparent, affordable, and fair.

The four key findings of the Task Force are as follows:

1. *The nature and purpose of assessments have changed over time, leading to a byzantine system that attempts to pass an increased share of the cost of court administration onto the parties to court proceedings.*

   The notion of a self-funded court system has gained increased currency in recent years, resulting in a complex web of filing fees, fines, surcharges, and other costs levied against civil litigants and criminal defendants. Cumulatively substantial despite often being individually modest, these assessments undermine the state's commitment to provide its citizens with access to the courts in civil proceedings, while distorting and unduly increasing the financial repercussions associated with criminal and traffic charges.

   These problems have been exacerbated by the ability of various special interest groups to finance aspects of their operations on the backs of court users. Today, it is all too common for litigants to pay for services through additional assessments that are wholly unrelated to the court system.

2. *Court fines and fees are constantly increasing and are outpacing inflation.*

   There has been a tremendous growth in the assessments imposed on the parties to court proceedings. Plaintiffs generally pay several hundred dollars simply to file a case. Civil defendants, who lack any say in whether to become involved in litigation, are often required to pay hundreds of dollars to defend themselves or risk a default judgment. Criminal and traffic defendants frequently leave court with hundreds, or even thousands, of dollars in assessments on top of what are supposed to be the only financial consequences intended to punish, namely, fines imposed by the court. The trend shows no sign of abating, as each new

legislative session brings with it fresh proposals for increased or additional assessments. At a time when many wages are stagnant, these additional assessments are creating further financial strain on low- and moderate-income litigants.

3. *There is excessive variation across the state in the amount of assessments for the same type of proceedings.*

   The fairness of a court system is often measured in part by its consistency. It is therefore troubling that civil and criminal assessments in our state are wildly inconsistent from county to county. A civil litigant may pay three times as much as a resident in a neighboring county for the exact same court service. Criminal defendants may find that their sentences can be severely impacted by something as insignificant as the side of the street on which their arrest occurred. The resulting inconsistency threatens the fairness, both actual and perceived, of the current system.

4. *The cumulative impact of the assessments imposed on parties to civil lawsuits and defendants in criminal and traffic proceedings imposes severe and disproportionate impacts on low- and moderate-income Illinois residents.*

   The collective impact of the current system of assessments is significant on financially insecure Illinois residents. Individuals and families in need of a legal remedy may go without if the costs of using the courts are too high. Criminal defendants may find their reentry into society severely burdened if their court debt is unmanageable. Without relief from runaway court costs, more and more Illinois residents will be forced to decide between protecting their legal rights and paying their basic living expenses.

These findings led the Task Force to adopt five core principles, which informed and influenced all of its recommendations:

1. *Role of Assessments in Funding the Courts.*

   Courts should be substantially funded from general government revenue sources. Court users may be required to pay reasonable assessments to offset a portion of the cost of the courts borne by the public-at-large.

2. *Relationship between Assessments and Access to the Courts.*

   The amount of assessments should not impede access to the courts and should be waived, to the extent possible, for indigent litigants and the working poor.

3. *Transparency and Uniformity.*

   Assessments should be simple, easy to understand, and uniform to the extent possible.

4. *Relationship between Assessments and Their Underlying Rationale.*

   Assessments should be directly related to the operation of the court system. Assessments imposed for a particular purpose should be limited to the types of court proceedings that are related to that purpose. Monies raised by assessments intended for a specific purpose should be used only for that purpose.

5. *Periodic Review.*

   The General Assembly should periodically review all assessments to determine if they should be adjusted or repealed.

The Task Force developed six recommendations, in accordance with these core principles, to address the findings summarized above. The recommendations are as follows:

1. *The Illinois General Assembly should enact a schedule for court assessments that promotes affordability and transparency.*

   The Task Force proposes enactment of the Court Clerk Assessment Act, a statute that will codify in one place all court assessments other than those imposed in connection with the disposition of criminal and traffic proceedings. The proposed legislation recognizes four classes of civil cases and creates different assessment schedules for each class. The Supreme Court would assign each type of civil case to one of the four classes. For assessments imposed in connection with the filing of a complaint by a plaintiff or an appearance by a defendant, the various permissible assessments are grouped into three categories based on the recipient of those funds (the Court Clerk, the County Treasurer, and the State Treasurer), and a maximum assessment amount for each category is established.

   Depending on the category or assessment in question, the county board, clerk of court, or Supreme Court would be authorized to set the applicable category or fee amount, up to the maximum allowed by the Act. Generally speaking, the amount for each category would function akin to a block grant, with the recipient of the fees possessing discretion to decide how to allocate those funds among the purposes authorized by the Act.

   While the Court Clerk Assessment Act would not create uniform assessments throughout the State - a goal that the Task Force has concluded cannot realistically be achieved in the immediate future - the Act would reduce variations across counties and would significantly improve the simplicity and transparency of the imposition, collection, and distribution of assessments in civil proceedings.

2. *The General Assembly and the Supreme Court should authorize amendments to the current civil fee waiver statute and related Supreme Court Rule, respectively, to provide financial relief from assessments in civil cases to Illinois residents living in or near poverty.*

   The Task Force proposes expansion of the existing civil fee waiver statute. The current statute uses the federal poverty level as a benchmark, providing automatic waivers to individuals living under 125% of the federal poverty level or otherwise qualifying for public benefits tied to poverty. The Task Force proposes expanding waivers of assessments in civil cases by creating a sliding scale waiver that offers a partial waiver of assessments to individuals earning between 125% and 200% of the federal poverty level.

   The Task Force also recommends providing for periodic review of assessment waivers and giving judges authority to reconsider or revoke waivers. That authority will combat potential fraud in obtaining assessment waivers and will enable judges to better tailor partial or complete waivers to individual needs as they may vary over time.

   These amendments to the civil fee waiver statute would be implemented by corresponding amendments to the applicable Supreme Court Rule.

3. *The General Assembly should authorize a uniform assessment schedule for criminal and traffic case types that is consistent throughout the state.*

   The Task Force proposes enactment of the Criminal/Traffic Assessment Act, a statute that would codify in one place all of the current assessments imposed in connection with the disposition of traffic or criminal charges. Much like the proposed Court Clerk Assessment Act, the legislature would establish fees for various classes of cases (the Criminal/Traffic Assessment Act would create 12 such classes) and the Supreme Court

would assign each type of case to the appropriate schedule based on the nature of the alleged offense. Unlike assessments under the Court Clerk Assessment Act, however, assessments imposed under the Criminal/Traffic Assessment Act would be uniform statewide, and counties and circuit clerks would play no role in setting the amounts of those assessments.

4. *The General Assembly and the Supreme Court should authorize the waiver or reduction of assessments, but not judicial fines, imposed on criminal defendants living in or near poverty.*

   The Task Force proposes the enactment of an assessment waiver statute for criminal cases similar to that recommended for civil proceedings. Implemented by Supreme Court Rule, the waivers would *not* include assessments pertaining to alleged violations of the Illinois Vehicle Code or punitive fines or restitution ordered by the court.

5. *The General Assembly and the Supreme Court should modify the process by which fines for minor traffic offenses are calculated under Supreme Court Rule 529.*

   Current Supreme Court Rule 529 provides that, upon a plea of guilty to a minor traffic violation not requiring a court appearance, all fines, penalties, and costs are to be set equal to bail. The Task Force proposes severing the link between bail and fine amounts. Instead, the Criminal/Traffic Assessment Act proposed by the Task Force fixes the total assessment at $150 in all minor traffic cases in which the defendant chooses to plead guilty without coming to court.

6. *The General Assembly should routinely consult a checklist of important considerations before proposing new assessments, and should periodically consult the checklist in reviewing existing assessments.*

   The Task Force has developed a checklist to guide legislators in (1) developing or reviewing new assessment proposals, and (2) periodically reviewing existing assessments to determine whether they should be modified or repealed. The checklist is intended to help ensure that the improvements produced by the Task Force's other recommendations are not eroded over time and that future assessments decisions are well-considered, consistent, and transparent.

II. History of the Task Force

This Report is the result of one year of intensive study and analysis by the Statutory Court Fee Task Force ("Task Force") – a statutorily created body with bipartisan representation from all three branches of Illinois government. The Access to Justice Act[1] created the Task Force to conduct a thorough review of the various statutory fees and fines imposed on civil litigants and on defendants in criminal and traffic proceedings. The Task Force was directed to submit this Report, containing its findings and recommendations, to the General Assembly and the Supreme Court by June 1, 2016.

The 15 members of the Task Force were appointed as follows: one each by the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the President of the Senate, and the Minority Leader of the Senate; two by the Governor; two by the Illinois Association of Court Clerks; and one by each of the seven Justices of the Illinois Supreme Court. The resulting group included judges, retired judges, legislators, circuit clerks, and members of the private bar from across the state.

Members of the Task Force

- Chair: Steven F. Pflaum, Neal, Gerber & Eisenberg LLP
- Representative Steven Andersson, Illinois General Assembly (R-Geneva)
- Chasity Boyce, Office of the Governor
- (Ret.) Judge Steven Culliton, Circuit Court of DuPage County
- Judge Thomas Donnelly, Circuit Court of Cook County
- (Ret.) Judge John P. Freese, Circuit Court of McLean County
- Maureen Josh, Circuit Clerk of DeKalb County
- Judge James L. Kaplan, Circuit Court of Cook County
- Katherine M. Keefe, Circuit Clerk of McHenry County
- John Maki, Illinois Criminal Justice Information Authority
- Senator John G. Mulroe, Illinois General Assembly (D-Chicago)
- Representative Elaine Nekritz, Illinois General Assembly (D-Buffalo Grove)
- Senator Dale Righter, Illinois General Assembly (R-Mattoon)
- Dawn Sallerson, Hinshaw & Culbertson LLP
- Adam Vaught, Hinshaw & Culbertson LLP

[1] Access to Justice Act, 705 ILCS 95/25, available at http://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=070500950K25.

The first meeting of the Task Force was held on June 23, 2015, and members met every month thereafter. Civil and criminal/traffic subcommittees were created to focus on issues unique to those kinds of court proceedings. The civil subcommittee was chaired by Judge James L. Kaplan and the criminal/traffic subcommittee was chaired by Circuit Clerk Katherine M. Keefe. The subcommittees met frequently, often several times a month, and developed recommendations that were reviewed and revised by the full Task Force.

Acknowledgments

The members of the Task Force wish to express their gratitude for the invaluable research support and insight provided by Linda Zetterberg, Dewey Hartman, and Lisa Goodwin, from the DuPage County Circuit Clerk's office, and Tom Lawson, from the Winnebago County Circuit Clerk's office.

The members of the Task Force also wish to express their appreciation for the assistance of the following individuals: Chief Judge Michael J. Sullivan of the Twenty-Second Judicial Circuit; John Amdor, from the Office of Representative Elaine Nekritz; Robin Murphy, from the Illinois Criminal Justice Information Authority; Caroline Chapman, from LAF; Malcolm Rich, Ali Abid, Matt Daniels, and Robert Dolehide, from the Chicago Appleseed Fund for Justice; *pro bono* research assistants Zach Zarnow and Stephanie Snow; and Holly L. Barocio and Allan J. Nacapuy of Neal, Gerber & Eisenberg LLP for their assistance with the layout and design of the print and electronic versions of this report.

The work of the Task Force would not have been possible without research, administrative, and drafting support from the Administrative Office of Illinois Courts. Special thanks go to Danielle Hirsch, Todd Schroeder, Alison Spanner, Samira Nazem, Angela Miner, Dan Mueller, and Tammy Sours of the AOIC, as well as to AOIC Director Michael Tardy.

III. Introduction

Eight hundred years ago, the drafters of the Magna Carta recognized the importance of even-handed access to justice when they proclaimed "to no one will we refuse or delay, right or justice." This theme has echoed throughout American history, from the provisions in the Bill of Rights protecting the right to jury trial, the right to counsel, and the prohibition against excessive fines, to the declaration in the Illinois Constitution that every person "shall obtain justice by law, freely, completely, and promptly."[3]

Today, Illinois is facing a serious threat to this fundamental right of equal access to justice. Skyrocketing filing fees in civil cases and a host of fees, costs, and fines in criminal and traffic proceedings are pricing our most vulnerable citizens out of full participation in the court system and imposing excessive financial burdens on all who do participate. This undermines the legitimacy of the court system, both actual and perceived, and its capacity to disseminate fair and equal justice to all.

Historically, court fees were intended simply to offset a portion of the cost of the services being provided.[4] Recognizing that the court system benefitted *all* members of society, a majority of funding came from taxpayer revenue. Today, civil litigants and defendants in criminal and traffic proceedings still pay fees designed to cover the costs associated with administering their cases. However, they are now required to cover many additional costs, including, but not limited to, those associated with court security, law libraries, and children's waiting rooms, as well as programs completely unrelated to the administration of justice like roadside memorials and after-school programs. Over the years, more and more costs have been passed on to court patrons through an elaborate web of fees and fines that are next to impossible to decipher and severely lacking in uniformity and transparency.

This Report explores in depth the shortcomings of the current system and its impact on Illinois citizens. The Report concludes with a series of recommendations to address those problems.

[2] Reginald Heber Smith, *Justice and the Poor*, 1919, p.5.

[3] Ill. Const. of 1970, art. I, section 12.

[4] *See generally*, *Crocker v. Finley*, 99 Ill. 2d 444 (1984); Ella Baker Center for Human Rights, *Who Pays? The True Cost of Incarceration of Families*, September 2015, p.15, available at http://whopaysreport.org/who-pays-full-report/.

A Note about the Scope of This Report

This Report focuses exclusively on the assessments charged to litigants in the Illinois circuit courts by circuit clerks or judges. It does not address the imposition of similar costs in non-judicial administrative hearings. Administrative hearings in Illinois take place in many different administrative bodies pursuant to the Illinois Administrative Procedure Act (5 ILCS 100/). Such hearings are administered by independent quasi-judicial bodies and operate outside of the state court system. Illinois residents appearing in front of administrative law hearing officers may encounter similar financial challenges and barriers to those appearing in the circuit courts as many municipalities, in particular, are increasingly using administrative hearings to collect revenue from residents. While it often appears to the public that administrative hearings are a part of the court system, the fines, fees, or other costs collected through administrative hearings are not used to fund the court system, are outside the control of the state judiciary, and are beyond the scope of this Report.

IV. Definitions

Assessments include all fees, costs, and other charges imposed on (a) parties to civil cases and (b) defendants in criminal and traffic proceedings, with the exception of fines that are ordered by a judge as punishment in the exercise of his or her discretion.

Fees are charges imposed on a party to reimburse the cost of a specific court activity or program. Fees are intended to support the operational costs of the justice system as a whole, in addition to reimbursing costs related to litigation, supervision, or incarceration in a particular case. The Illinois Supreme Court has held that some charges labeled as "fees" truly function as taxes because "…a charge having no relation to the services rendered, assessed to provide general revenue rather than compensation, is a tax."[5] Fees are assessed by a clerk.

Fines are monetary punishments for infractions, misdemeanors, or felonies. Fines are primarily intended to deter crime and punish offenders. Fines can be mandatory or discretionary. Mandatory fines are fixed amounts that are included in what this Report terms "assessments." Discretionary fines may be ordered by a judge depending on the specific facts of the case and are not considered to be "assessments." The Illinois Supreme Court has held that some charges in criminal proceedings labeled as "fees" actually function as fines if the charges do not compensate the State for the cost of prosecuting the defendant.[6] Fines are assessed by a judge.

[5] *Crocker v. Finley*, 99 Ill.2d 444, 452 (1984).

[6] *People v. Graves*, 235 Ill. 2d 244, 255 (2009) (holding that a $10 mental health court fee and a $5 youth diversion/peer court fee "although labeled as 'fees,' are in fact fines, which are punitive in nature").

V. Court Assessments: An Overview

The process by which court assessments are calculated has become more complex over time. What was once a simple dollar amount directly related to the cost of processing the case before the court has become a much more complicated calculation that can involve hundreds, or even thousands, of dollars divvied up among dozens of recipients. The following discussion describes the process by which court assessments are proposed, authorized, and ultimately assessed against litigants. The first two sections will describe the composition of civil and criminal assessments, respectively. The last section will explain the process by which assessments are proposed and authorized.

Civil Assessments

To participate in civil litigation, each party must first pay the applicable court assessments. While the total amount can vary widely – by both case type and the county in which the case is pending – each county follows the same basic formula in calculating civil assessments.

As shown in Figure 1, an assessment in a civil case is actually a composite of many different categories of fees, each one intended to defray the cost of a different aspect of the court's operations. A civil assessment is akin to a recipe that combines a number of ingredients. The first ingredient is the filing fee for plaintiffs or the appearance fee for defendants. The base filing fee or appearance fee is intended to reimburse the court for the cost of adding one more case to the docket. This fee currently varies in amount depending on case type and county size and forms the baseline cost to which everything else is added.[7]

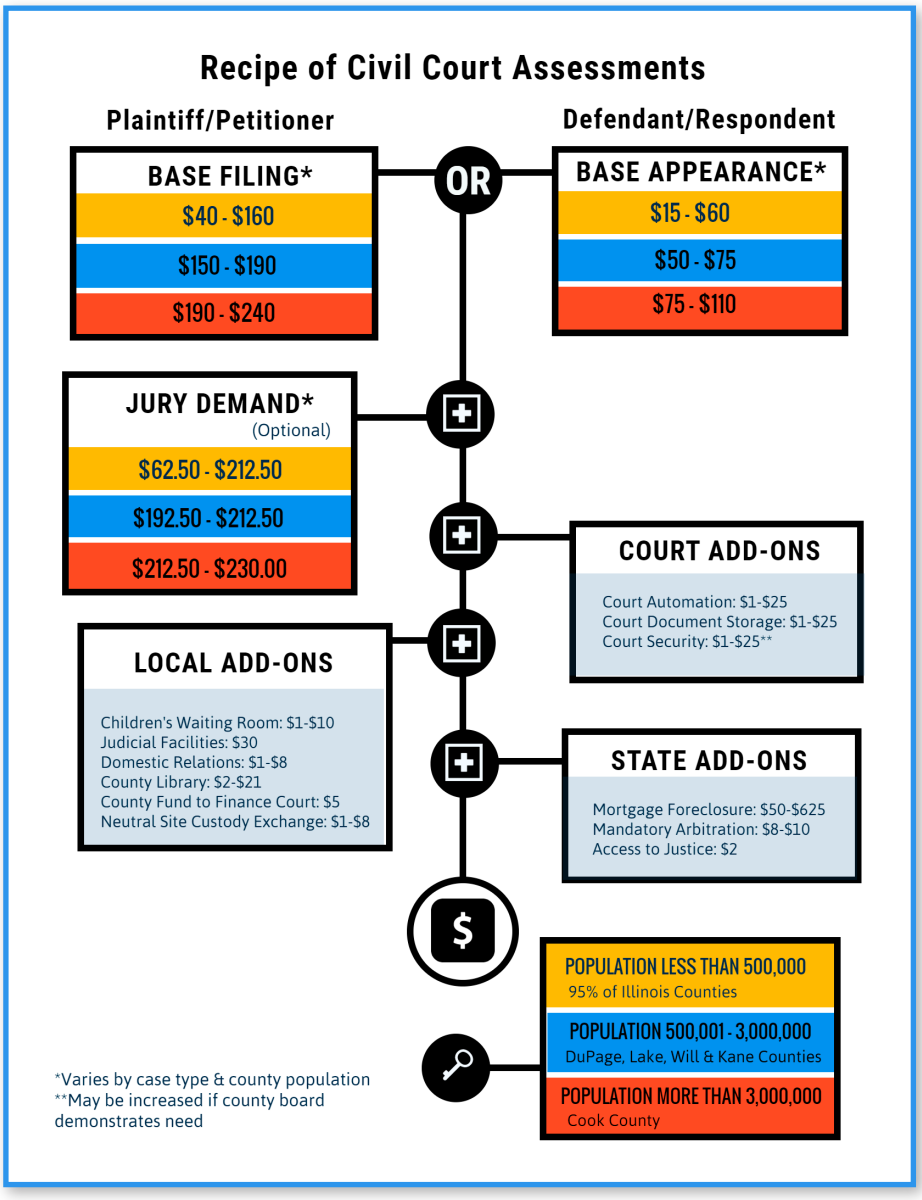

Figure 1

[7] The base filing/appearance fees are labeled as a "Clerk Filing Fee," in 705 ILCS 105/27.1a 2. However, these fees are directed to the county's general revenue fund, not the Circuit Clerk.

If either party elects to request a jury trial, that party incurs a jury demand fee. Next, a number of court add-on fees are added to the mix (*e.g.,* court automation or document storage). The revenue collected from the court add-on fees is used to fund court operations.

Local and state add-on fees are the final ingredients. The local add-on fees cover services that are specific to a particular jurisdiction (*e.g.,* a law library fee or children's waiting room fee if the local courthouse has one), while the state add-on fees cover broader services (*e.g.,* Access to Justice Fee). The revenue collected from local fees stay in the county where the case is heard, while the money collected from state fees go to the state. Some of these add-on fees are mandated by law in all counties and case types, but others are discretionary and, when imposed, vary in amount from county to county.

It should be noted that most fees are collected twice in each civil case, once from the plaintiff/petitioner and once from the defendant/respondent if he or she chooses to participate.

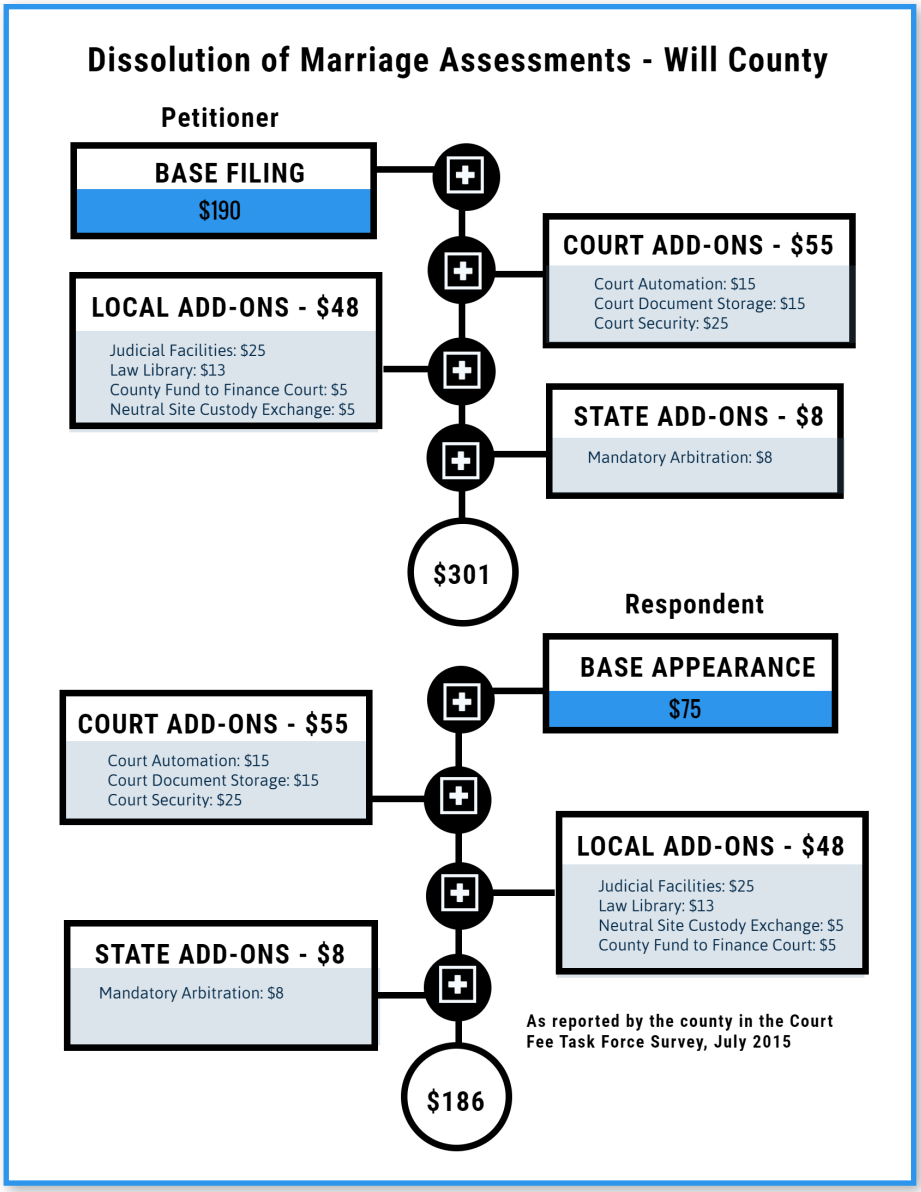

Figure 2

To understand how this works, consider the following example taken from a recent case involving a married couple in Will County who were seeking to dissolve their marriage. As shown in Figure 2, the petitioner paid a $190 base filing fee, $55 in court fees ($15 Court Automation Fund, $15 Document Storage Fund, and $25 Court Security Fee), $8 in state fees ($8 Mandatory Arbitration Fee), and $48 in local fees ($25 Judicial Facilities Fee, $13 Law Library Fee, $5 County Fund to Finance the Court, and $5 Neutral Site Custody Exchange). Once all of the extra court fees and state and local add-ons are calculated, the initial $190 base fee increased by almost 60%, to a total of $301.

The respondent in the Will County proceeding paid a total of $186 to participate in the lawsuit. The $186 in court assessments consists of a $75 appearance fee and the same court, state, and local add-on fees paid by the petitioner ($55 court add-on fees, $8 state add-on fees, and $48 local add-on fees). While the base appearance fee is only $75, the amount paid by the respondent more than doubled once the entire assessment was calculated.

Criminal/Traffic Assessments

In criminal and traffic proceedings, assessments are imposed at the conclusion of a case and are not a prerequisite for participation, as they are in civil litigation. Criminal and traffic assessments are a combination of mandatory fines and fees. Restitution and discretionary fines may be imposed by a judge as part of a criminal defendant's punishment and are not included in the court assessments; instead, those costs are tailored to the nature of the crime and the judge has broad discretion to set them within the parameters laid out by statute. Mandatory court fees and fines, however, are set amounts fixed by the county board or authorized by state statute.[8] The mandatory amounts are applied, without discretion, to all criminal defendants regardless of the specific facts of their cases.

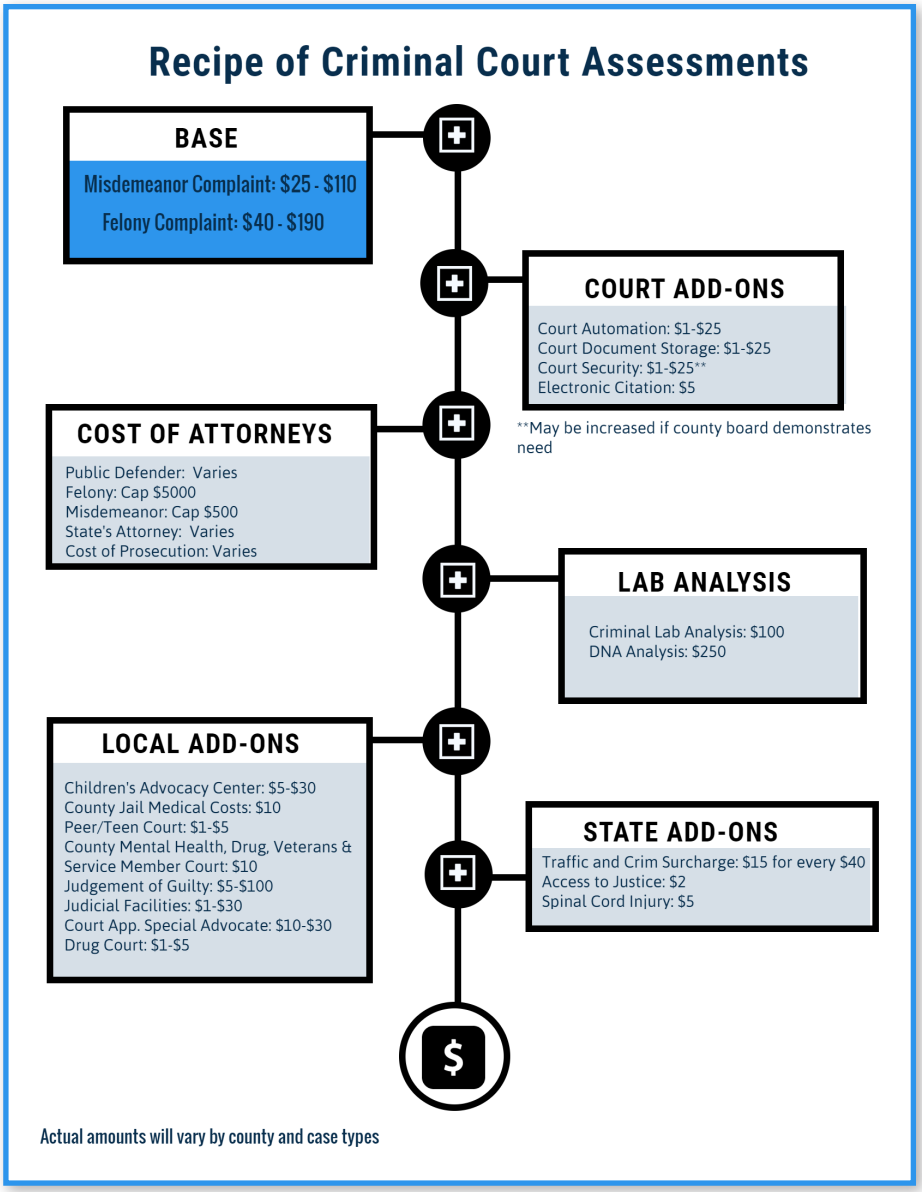

Figure 3

Similar to a civil litigant's assessments, a criminal defendant's assessments are calculated by adding a variety of state and local charges to the baseline filing fee. Because fines also must be considered on the criminal side, the recipe for calculating criminal and traffic assessments involves more ingredients. The recipe is harder to generalize than that for assessments in civil cases because there is far more variance, both from county to country and from case type to case type. Nevertheless, it is still useful to examine the core costs included in the assessments imposed in criminal and traffic cases.

As shown in Figure 3, the first ingredient in calculating criminal court assessments is the base fee which is paid by the criminal defendant and varies by offense and county population size. Payment of the base fee essentially requires a criminal defendant to subsidize the prosecution's costs in bringing the case against him or her. Next, the defendant is charged the same court fees that civil litigants are assessed in every courthouse across the state (*e.g.,* court security and document storage). Depending on the jurisdiction and case type, the defendant may also have to pay fees to cover the cost of attorneys involved in the case, including both the costs of the public defender's office

[8] Illinois law caps the amount of a discretionary fine at $25,000 for a felony; $2,500 for a Class A misdemeanor; and $1,500 for all other misdemeanors. *See* 730 Ill. Comp. Stat. 5/5-4.5-50(b), 730 Ill. Comp. Stat. 5/5-4.5-55(e), 730 Ill. Comp. Stat. 5/5-4.5-60(e).

defending the case and the state's attorney's office prosecuting it, and to the police department to subsidize the costs of the arresting officer's time. In addition, a defendant is often assessed DNA and/or lab analysis fees, which cover the costs of any lab fees involved in prosecution of the case.

Mandatory state and local add-on fees and fines come next. These are amounts authorized by the state or county (some the same as the local add-ons for civil cases, some unique to criminal proceedings), and are usually relatively small in size but large in number. It is not uncommon for a traffic or criminal defendant to be charged dozens of these "minor" fines which can, in the aggregate, create a significant financial burden. The number of fines varies depending on location and case type, but every criminal and traffic defendant can expect to face some of them at the time of conviction. The total criminal assessment is calculated once all of the additional court, state, and local statutory fees are added to the base filing fee. However, this amount does not include any judicial fines or restitution ordered in the judge's discretion as punishment for the defendant's crime.

Consider the recent example of a defendant in McHenry County who was convicted of Driving Under the Influence (DUI) and fined $150 by the judge. That defendant paid a total of $1,625 in court assessments (in addition to the $150 fine imposed by the judge). As illustrated in Figure 4, this amount is calculated by assessing $75 as a base fee and then adding $90 in court fees ($15 Court Automation Fee, $15 Court Document Storage Fund, $30 Circuit Court Fund, $25 Court Security Fee, and $5 E-Citation Fee) and $12 for the cost of attorneys ($2 State's Attorney Automation Fee and $10 State's Attorney Fee). Finally, the defendant was assessed a series of 11 state and local add-on fees totaling $1,448 (including fees for

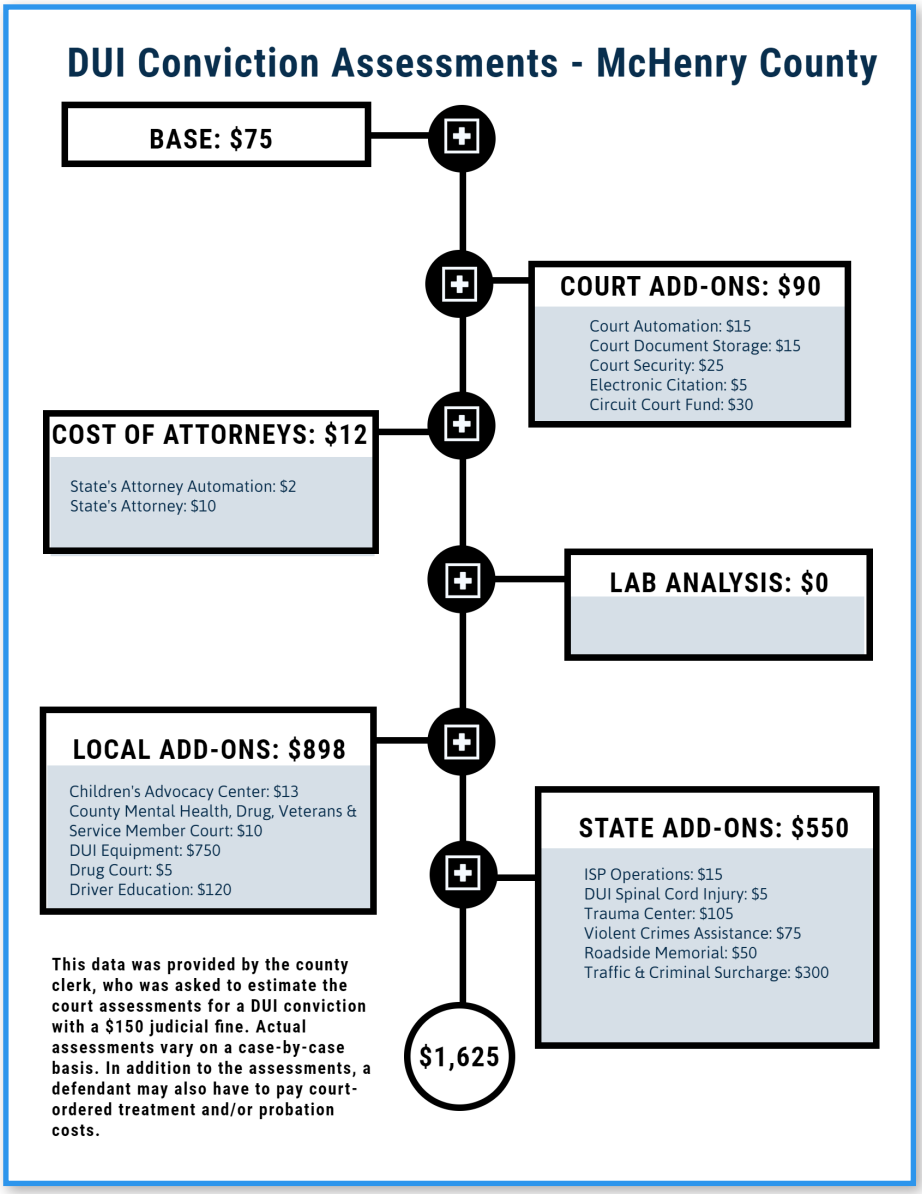

Figure 4

[9] Shriver Center, *Debt Arising from Illinois' Criminal Justice System: Making Sense of the Ad Hoc Accumulation of Financial Obligations*, November 2009, p.9-19, available at http://povertylaw.org/sites/default/files/files/webinars/criminaldebt/debt-report.pdf.

[10] *Id.* at 18-20.

[11] Illinois law caps the amount of a discretionary fine at $25,000 for a felony; $2,500 for a Class A misdemeanor; and $1,500 for all other misdemeanors. *See* 730 Ill. Comp. Stat. 5/5-4.5-50(b), 730 Ill. Comp. Stat. 5/5-4.5-55(e), 730 Ill. Comp. Stat. 5/5-4.5-60(e).

Children's Advocacy Centers, Drug Court, Driver Education, Spinal Cord Research, and Roadside Memorial Funds, among others). All told, the assessments totaled $1,625, increasing the base filing fee of $75 by more than 2,000%. The total assessments were more than ten times the $150 judge-ordered fine. This example highlights the disconnect that can occur between the discretionary fine ordered by a judge as punishment and the fixed costs – ostensibly not intended to punish – which are unrelated to the specific offense and set by statute.

On top of the judicial fine and court assessments, the defendant will also be charged for mandatory DUI treatment, a program which routinely costs several thousands of dollars. Similar requirements exist for defendants convicted on Domestic Violence charges. Some criminal charges also add on a surcharge, an additional cost calculated as a percentage of the fine, at the end of the case. For example, the Criminal and Traffic Surcharge provides that a court may assess an additional $15 fine for every $40 in fines assessed, or a 37.5% surcharge, against a defendant as part of the punishment. It is not uncommon for a criminal defendant to leave court with total expenses in the thousands of dollars.

As these examples demonstrate, under the current system court fees are complicated to understand and calculate. The final cost assessed against a litigant often bears little or no relation to the actual cost of the court in administering the case. This Report will explain in more detail what the consequences of the current system are and how they negatively impact court users and the courts, before proposing a number of recommendations to address these issues.

Legislative Process for Creating New Fees and Fines

Any county, branch of government, agency, or special interest group can lobby a legislator to sponsor a bill that would add a new cost to be assessed against civil litigants, traffic or criminal defendants, or both. All such bills must include a provision for distributing the revenue to the appropriate county, agency, or special interest group after it is paid by the litigants and collected by the court.

As illustrated in Figure 5, court assessments originate as bills which must be passed by the General Assembly and signed by the governor. Many bills then require the additional step of a county ordinance before the assessment can be collected. Statutory fines, however, do not require local approval; the law itself typically sets out to which entity the fine is remitted. Once the new law authorizing the fee or fine goes into effect, the clerk (for fees) or the judge (for fines) is tasked with assessing the cost against all applicable litigants.

Consider, for example, the new Judicial Facilities Fees enacted in 2015.[13] The Judicial Facilities Fee allows two counties – Will and Kane Counties – to assess a fee of up to $30 in all civil matters at the time of filing and in criminal and traffic matters at the time of conviction if the defendant appeared in court. The fee is intended to help fund the construction of new judicial facilities. At the time of this writing, Will County is the only county that has enacted a Judicial Facilities Fee, approving a $25 fee in all civil and criminal proceedings.[14] While the current statutory authority restricts the application of a Judicial Facilities Fee to those two counties, there is little reason to believe the collection of a Judicial Facilities Fee will be limited to Will or Kane Counties. In fact, in this legislative session alone, there are two pending bills in the General Assembly that would allow Montgomery County [15] and Lake County[16], respectively, to have the authority to impose a Judicial Facilities Fee not to exceed $30.

[13] 55 ILCS 5/5-1101.3.

[14] *Ordinance Establishing the Judicial Facilities Fee and the Judicial Facilities Construction Fund*, Will County Ordinance 15-23 (2015).

[15] SB2503.

[16] SB2784.

As these examples show, there is no one entity responsible for proposing and administering court fees. Nor is there one statute that lays out all of the existing fees. Instead, dozens of different agencies have proposed fees that are codified in dozens of different statutes – which has allowed filing fees to take on broader and broader purposes that are less directly related to litigation and court administration. The next section of the Report will discuss this practice in greater detail and the impact that it has on court patrons.

Figure 5

VI. Court Assessments: Four Key Findings

After a yearlong study, the Task Force made four key findings regarding the current system of imposing, collecting, and disbursing court assessments. The current system charges litigants an increasing number of assessments that are imposed in a manner that is opaque and inconsistent. The end result places an undue burden on litigants, impedes access to justice for civil litigants and reentry into society for criminal defendants, creates an administrative nightmare for court clerks responsible for collecting and disbursing assessments, and erodes public confidence in the judicial system.

The four key findings are as follows:

1. *The nature and purpose of assessments have changed over time, leading to a byzantine system that attempts to pass an increased share of the cost of court administration onto the parties to court proceedings.*
2. *Court fines and fees are constantly increasing and are outpacing inflation.*
3. *There is excessive variation across the state in the amount of assessments for the same type of proceedings.*
4. *The cumulative impact of the assessments imposed on parties to civil lawsuits and defendants in criminal and traffic proceedings imposes severe and disproportionate impacts on low- and moderate-income Illinois residents.*

Each of these findings is discussed below.

Finding #1: The nature and purpose of assessments have changed over time, leading to a byzantine system that attempts to pass an increased share of the cost of court administration onto the parties to court proceedings.

Most litigants are unaware that their court costs are comprised of a number of fees intended to fund a variety of services and projects. With growing frequency, counties are passing the costs of operating their court systems on to parties to civil cases and defendants in criminal and traffic cases. A complex network of add-on fees intended to fund specific programs and special interests, often increasing the final cost to court users exponentially, is now added to the baseline filing fees that were initially designed to reimburse a court for the cost of adding one more case to its docket. Courts are increasingly treated as revenue generators – and litigants by extension as revenue providers.

Civil Proceedings

Many assessments in civil cases are not true user fees, but instead function as taxes levied against civil litigants to fund public welfare programs for the general good.[17] For example, many counties charge all civil litigants a fee to fund the children's waiting room. It does not matter if the litigant has young children, or if those children use the waiting room. Instead, the fee, like many others, acts as a tax imposed on all civil litigants alike, regardless of their level of interaction with the court system.[18] Because these court assessments are generally bundled together and presented to the litigant as one lump sum, there is no transparency and it is extremely difficult for litigants to know what it is they have just "purchased" with their court assessments. Many litigants would presumably be shocked to learn what a small percentage of their court assessments are actually used to fund the cost of administering their case.

As state and local budgets have become tighter over the years, circuit courts have increasingly turned to their "customer base" of litigants to raise funds for their own operations. Consider the Judicial Facilities Fees described above. This new fee, assesssed against litigants in Will County, is intended to raise funds "for the sole purpose of funding in whole or in part the costs associated with building new judicial facilities within the county."[19] This is a prime example of the legislature attempting to "shift some of the costs of facility expansion from property taxes to user fees."[20] Furthermore, there is no sunset date for the fee, so it could, theoretically, be assessed indefinitely, even after the new courthouse is built.[21]

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[17] *See Crocker v. Finley*, 99 Ill. 2d 444, 452 (1984)("court charges imposed on a litigant are fees if assessed to defray the expenses of his litigation. On the other hand, a charge having no relation to the services rendered, assessed to provide general revenue rather than compensation, is a tax.")

[18] *Id.*

[19] 55 ILCS 5/5-1101.3.

[20] "SB 1336 Would Allow Kane to Charge $40 Fee to Help Pay for Judicial Facilities," *Kane County Connects* (February 24, 2015), Available at http://kanecountyconnects.com/2015/02/new-state-sentate-bill-would-allow-kane-to-charge-fees-pay-for-facilities/.

[21] *Id*.

Criminal/Traffic Proceedings

On the criminal and traffic side, defendants routinely face dozens of fees and fines that fund any number of programs. Assessments fund special interest projects ranging from providing bridge loans to burn victims,[22] to offering zero-interest loans to local fire departments for new fire trucks,[23] to supporting spinal cord injury research.[24] While many of these add-on court assessments are small in size – only a few dollars each – the collective impact can be staggering, especially to indigent defendants. In addition, the burden imposed by this proliferation of assessments extends to court clerks and others responsible for distributing the revenues generated by these add-ons to the designated recipients.

For example, a defendant recently convicted of Driving Under the Influence (DUI) in McLean County paid court assessments to be distributed to 25 separate funds for varying local, county, and state purposes. As Figure 6 explains, of the $1,752 collected from that defendant, only $135 (8%) was actually used to reimburse the court for specific costs associated with the case and general overhead. That means over 90% of the total assessment was earmarked for programs and services that were unrelated to the pending litigation.

At the county level, $163.63 goes to cover other county expenses associated with the criminal justice system including county jail medical costs, probation services, and a state's attorney records automation fund, among other services and costs. The bulk of the money, $1,101.37, is distributed to the state to fund services and programs including the Illinois State Police, maintance of the Law Enforcement Agencies Data System (LEADS), trauma centers, fire truck safety, and roadside memorials. One of the newest such costs assessed to convicted DUI defendants is called the George Bailey Memorial Fund, whose proceeds are to be used to provide burn victims with less than 18 months to live with a loan equal to five months of Social Security Disability payments that the burn victim will receive from the Social Security Office after a five-month waiting period.[25] Finally, the municipality where the defendant was prosecuted receives $352 of the total amount for the arresting agency to defray its costs.

None of the foregoing is intended to question the value of the various funded programs to society at large. However, many, if not most, of the programs have an attenuated connection to a DUI conviction or even the criminal justice system. In this DUI example (and countless others), there must be a mechanism to ensure that the system does not impose unreasonable financial obligations to fund other governmental services, and that court assessments are not simply an alternate and hidden form of taxation.

[22] Public Act 99-0455.
[23] 20 ILCS 3501/825-80.
[24] 30 ILCS 105/6z-50.
[25] Public Act 99-0455.

Distribution of the Statutory Fees and Fines in a DUI Case in McLean County

As reported in the August 2015 IVC Fees Three Violations Survey, the Manual on Fines and Fees, and Compiled Statutes.

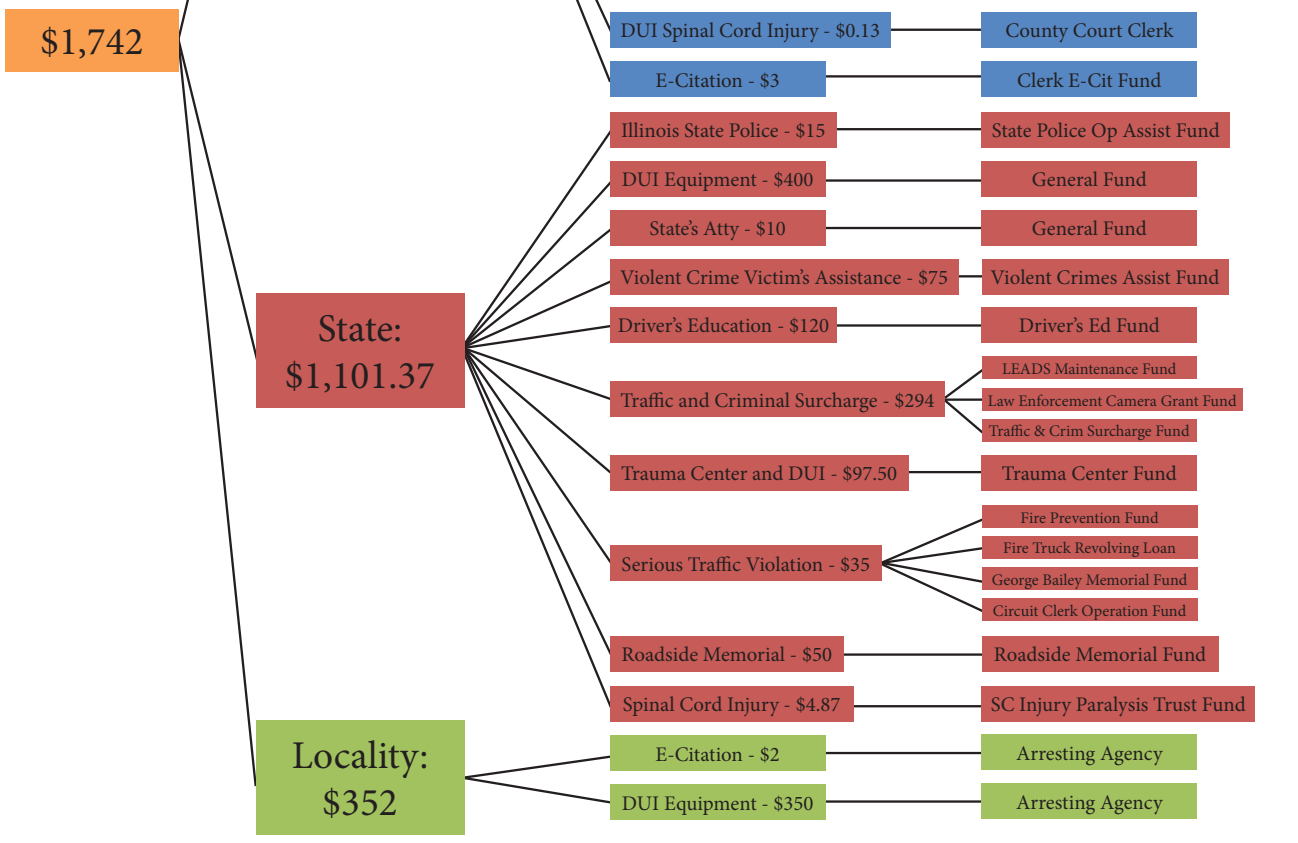

Figure 6

Finding #2: Court fines and fees are constantly increasing and outpacing inflation.

Relying on litigants to fund court operations and programs with little or no connection with the courts has led to significant increases in court assessments. As a policy matter, there is growing concern that mounting assessments in civil cases threatens the viability of the courts as an economically feasible method for dispute resolution. For defendants in traffic or criminal proceedings, the financial repercussions associated with assessments are often disproportionate to the offense and to the fine that is intended to constitute the appropriate punishment.

Civil Proceedings

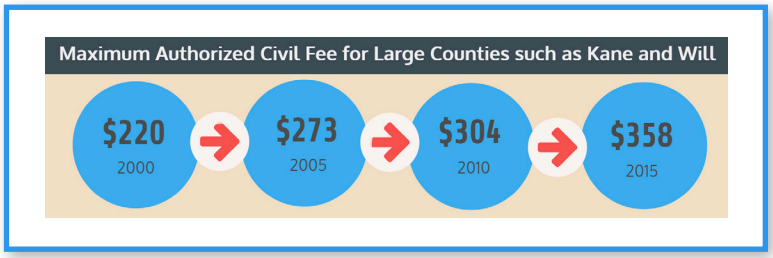

Figure 7

On the civil side, the steady trend of rising court assessments is exemplified by the maximum filing fee authorized for large counties (like Will or Kane). Figure 7 reveals that this fee has grown by approximately 80% since 2000. At the other end of the litigation spectrum, consider a small claims action with an amount in controversy of $450. Small claims actions are intended to be relatively straightforward and easy methods for resolving minor disputes like failure to return a security deposit or to fix a car correctly. In 2015, in DeKalb County, it cost $118 to file the case as a plaintiff, and $113 to respond as a defendant. In 2016, only one year later, the cost had increased to $148 to file the case as a plaintiff and $143 to respond. While the $30 increases may not seem significant, they constitute increases in excess of 25% in the span of a single year. The total payment to the court by the parties equals $291, which could very well eclipse the value of the amount in controversy.

This trend shows no signs of abating. In September 2015, an amendment to the Access to Justice Act authorized an additional $2 fee to be collected from every litigant, civil and criminal, to finance legal services for veterans and active duty service members.[26] In the 2015-2016 legislative session that followed, at least eight bills were introduced proposing new assessments or increases to the maximum amount collectable under existing laws. The civil side saw two counties seeking a Judicial Facilities Fee of up to $30, plus proposals for a statewide $9 EBusiness[27] fee and a $15 Juror Services[28] fee. If all these bills are enacted, in the coming year all civil litigants could see at least a $24 increase in initial filing fees; and civil litigants in Montgomery and Lake counties could see an increase of up to $54.

Figure 8

Some existing assessments have also recently been increased. For example, the Bureau County Board recently approved a resolution to increase the Court Security Fee charged to every litigant from $25 to $75.[29] This three-fold increase is allowed under the state law which caps court security fees at $25 unless the county requesting the increase conducts an "acceptable cost study."[30]

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[26] 705 ILCS 105/27.3g

[27] SB3162.

[28] HB 5742.

[29] See Goldie Rapp, "New $$$ for Courthouse Security," *Bureau County Republican*, August 10, 2015, available at http://www.bcrnews.com/2015/08/10/new-for-courthouse-security/aiwx71n/; Bureau County Board Agenda, April 14, 2016, available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwjG_KmpysPMAhWHdR4KHXVsAvIQFggpMAI&url=http%3A%2F%2Fbureaucountyil.iqm2.com%2FCitizens%2FFileOpen.aspx%3FType%3D14%26ID%3D1014&usg=AFQjCNERLGEdxHb9SoqnFSyR4XKloT1s6w&sig2=mTqKQAazazO77_eCh0xDHw.

[30] 55 ILCS 5/5-1103.

Criminal/Traffic Proceedings

The growth in the number and amount of assessments has been even steeper on the criminal side. Consider the example of DUI convictions. Under the current system, statutory maximums are set by population size. As shown in Figure 9, the maximum amount in large counties has grown by more than 300 percent since 2000, with much of that growth happening within the past five years. Taking the example of a defendant convicted of a DUI in DuPage County, from 1995 to 2015, the number of add-on fees increased from nine to 27. The amount of those fees also increased – from $300 to $2,172. That is an increase of more than 600% in just 20 years. Furthermore, as Figure 10 demonstrates, DuPage County is not an outlier. This same kind of growth is happening in every county throughout the state.

It should also be recognized that, in addition to court assessments, court users may incur other significant costs in connection with judicial proceedings. Such "hidden" costs may relate to transportation to and from court, parking, time off work, and child care obligations. In addition, court-ordered fees may be incurred after the filing of a civil action or sentencing in a criminal action, such as fees for service of process, court-ordered mediation, court-ordered parenting classes, or probation costs. Defendants found guilty of a DUI or domestic battery are required to pay for treatment which can cost several thousand dollars. And of course, litigants who can afford to retain an attorney can incur significant additional expense if they choose to do so.

The cumulative amount of assessments and hidden costs undermines the economic viability of civil litigation and the reasonableness of the economic burdens associated with criminal and traffic proceedings. In light of the fact that the benefits derived from the efficient administration of justice are not limited to the parties to court proceedings, there must be a recalibration of the balance between the growing desire for additional government revenue and the cumulative cost of litigation.

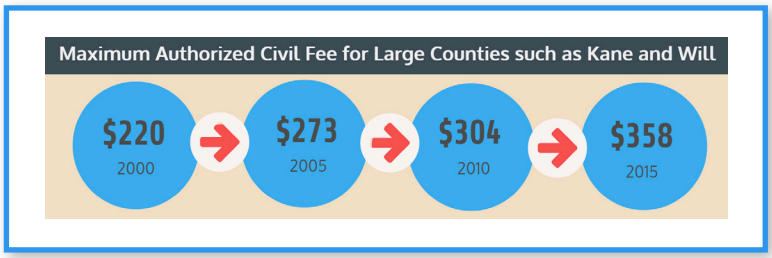


Figure 9

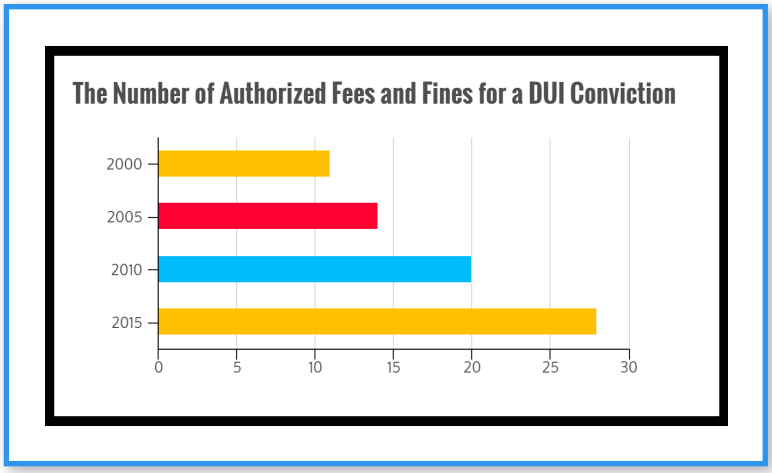


Figure 10

Finding #3: There is excessive variation across the state in the amount of assessments for the same type of proceedings.

We have previously explained how counties play a large role in setting the amount of court assessments. The price for county discretion, however, is a lack of statewide uniformity. County control over what rates to charge and which add-on fees to collect has led to wildly different court assessments and fines throughout the state for the same type of civil, traffic, or criminal proceedings.

Civil Proceedings

By statute, the baseline filing and appearance fees are tied to county size, so a litigant in a county with a larger population will pay higher fees than a litigant in a county with a smaller population. Many of the other components of a total filing fee are authorized by county boards at varying levels across the state, producing a pronounced lack of uniformity.

Figures 11-14 demonstrate at a glance the vastly different financial obligations imposed on litigants depending on their location. In Illinois, two parties wishing to dissolve their marriage will face substantially different financial burdens based on nothing more than the county in which they happen to file their case. To see how this plays out in practice, we will examine the costs recently faced by three married couples seeking to dissolve their marriages in Knox County, Will County, and Cook County, respectively.

Figure 11 shows that, relatively speaking, the Knox County couple received a bargain, paying only $280 in combined court costs to dissolve their marriage (the petitioner initiating the case will pay $165 and the respondent will pay $115). In contrast, as Figure 13 shows, the Will County couple paid a combined $487 in court costs to dissolve their marriage ($301 from the petitioner and $186 from the respondent). The Will County petitioner's filing fees of $301 are almost twice the amount charged to the Knox County petitioner to initiate the exact same case.

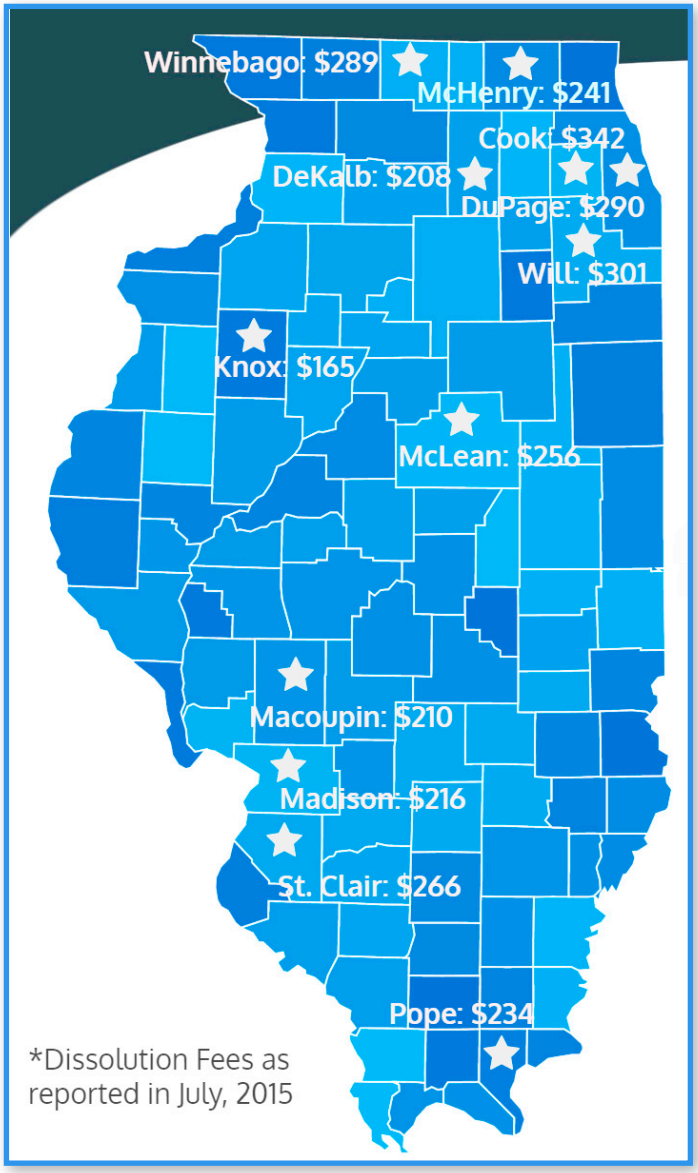


Figure 11

Finally, consider the financial burden faced by the Cook County couple. As the most populous county in the state, Cook County is also the most expensive for many types of litigation. Figure 14 shows that the dissolution case cost the Cook County petitioner and respondent $342 and $206, respectively, or a combined $548 in court assessments. Cook County also has the highest concentration of residents living in or near poverty of anywhere in the state. A potential petitioner who could barely afford the $165 fee to initiate a case in Knox County may have to think twice, or pass altogether, before initiating the same case in Cook County.

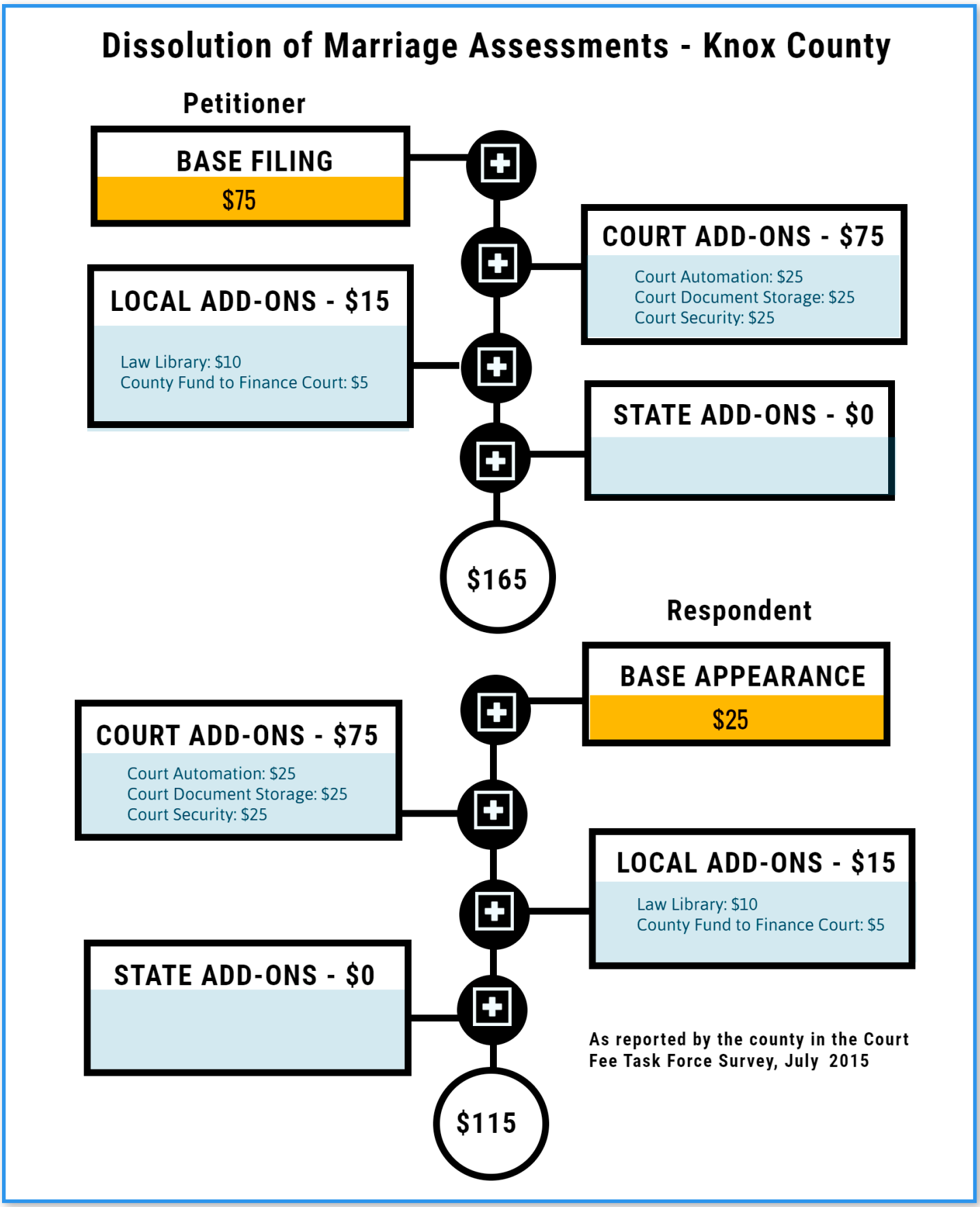

Dissolution of Marriage Assessments - Knox County
Petitioner
BASE FILING
$75
COURT ADD-ONS - $75
Court Automation: $25
Court Document Storage: $25
Court Security: $25
LOCAL ADD-ONS - $15
Law Library: $10
County Fund to Finance Court: $5
STATE ADD-ONS - $0
$165
Respondent
BASE APPEARANCE
$25
COURT ADD-ONS - $75
Court Automation: $25
Court Document Storage: $25
Court Security: $25
LOCAL ADD-ONS - $15
Law Library: $10
County Fund to Finance Court: $5
STATE ADD-ONS - $0
$115
As reported by the county in the Court Fee Task Force Survey, July 2015

Figure 12

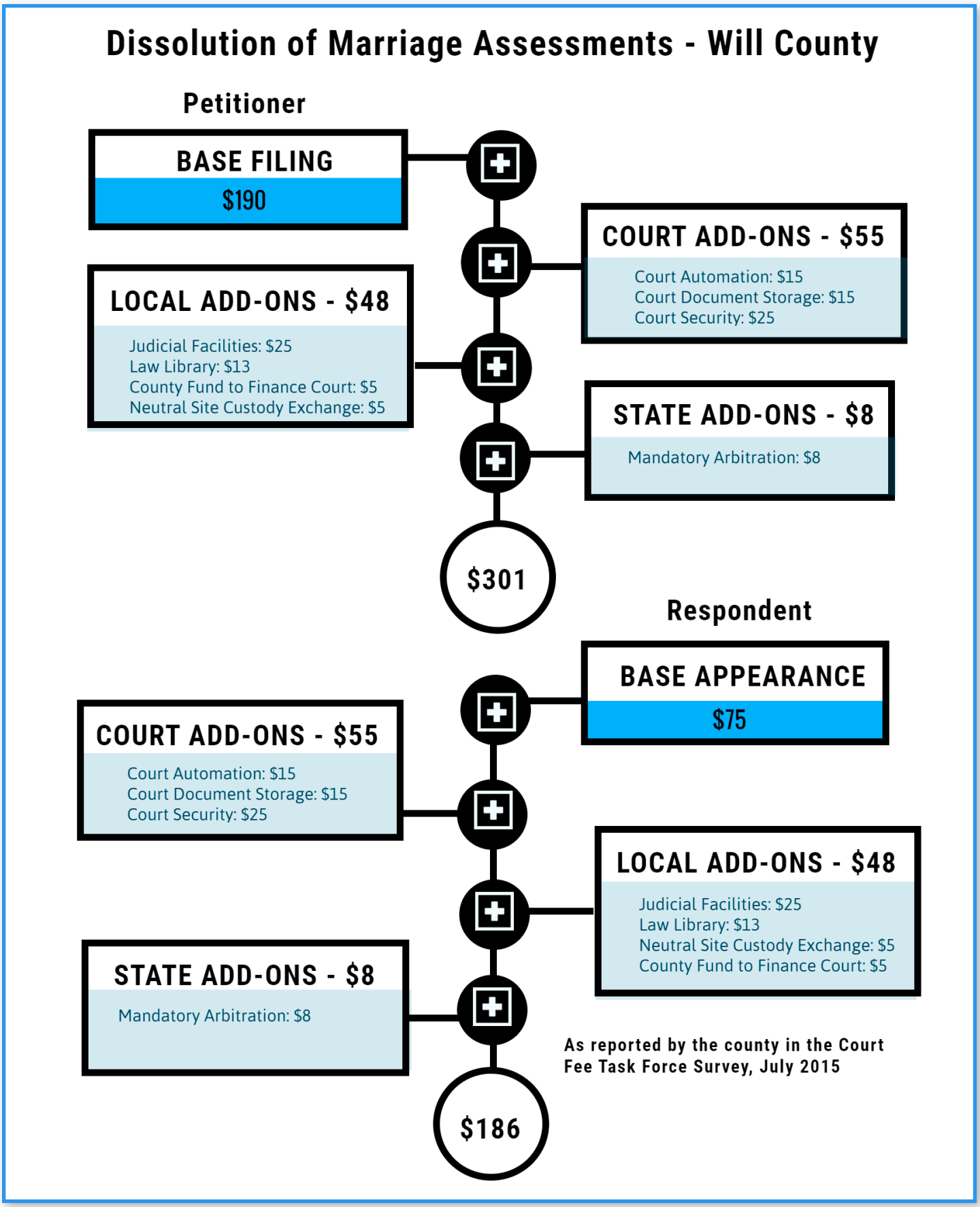

Dissolution of Marriage Assessments - Will County
Petitioner
BASE FILING
$190
COURT ADD-ONS - $55
Court Automation: $15
Court Document Storage: $15
Court Security: $25
LOCAL ADD-ONS - $48
Judicial Facilities: $25
Law Library: $13
County Fund to Finance Court: $5
Neutral Site Custody Exchange: $5
STATE ADD-ONS - $8
Mandatory Arbitration: $8
$301
Respondent
BASE APPEARANCE
$75
COURT ADD-ONS - $55
Court Automation: $15
Court Document Storage: $15
Court Security: $25
LOCAL ADD-ONS - $48
Judicial Facilities: $25
Law Library: $13
Neutral Site Custody Exchange: $5
County Fund to Finance Court: $5
STATE ADD-ONS - $8
Mandatory Arbitration: $8
$186
As reported by the county in the Court Fee Task Force Survey, July 2015

Figure 13

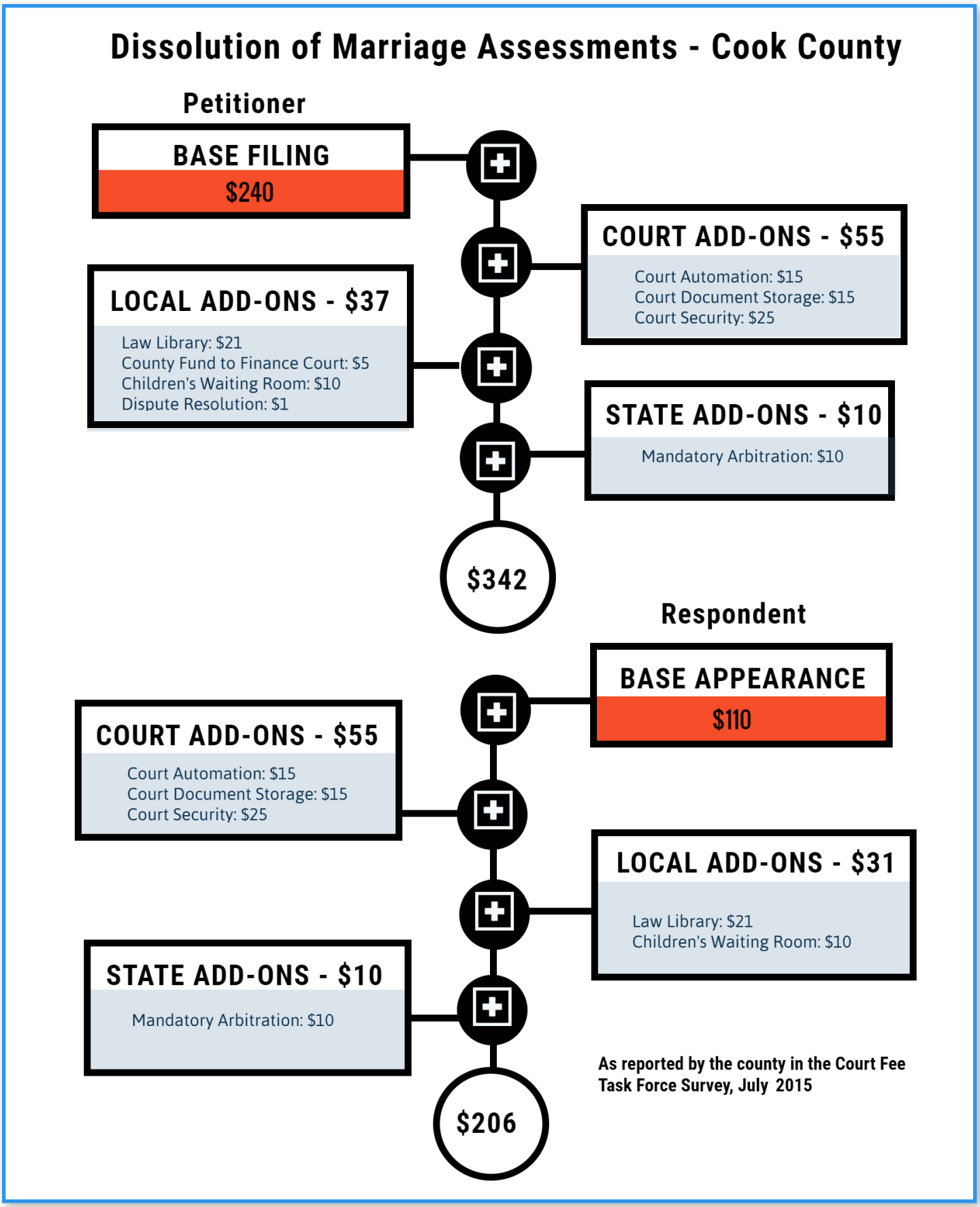

Dissolution of Marriage Assessments - Cook County
Petitioner
BASE FILING
$240
COURT ADD-ONS - $55
Court Automation: $15
Court Document Storage: $15
Court Security: $25
LOCAL ADD-ONS - $37
Law Library: $21
County Fund to Finance Court: $5
Children's Waiting Room: $10
Dispute Resolution: $1
STATE ADD-ONS - $10
Mandatory Arbitration: $10
$342
Respondent
BASE APPEARANCE
$110
COURT ADD-ONS - $55
Court Automation: $15
Court Document Storage: $15
Court Security: $25
LOCAL ADD-ONS - $31
Law Library: $21
Children's Waiting Room: $10
STATE ADD-ONS - $10
Mandatory Arbitration: $10
$206
As reported by the county in the Court Fee Task Force Survey, July 2015

Figure 14

These examples are endemic of the landscape of civil assessments across Illinois. Figure 15 summarizes how the base filing and appearance fees in marriage dissolution cases vary from county to county, even before any of the court and local add-ons are thrown into the mix. The steps involved in the case, however, are the same in all counties (petition, service, response, financial investigation, trial). The judicial salaries are also the same. Yet we see huge disparities in assessments that are exacerbated as more counties use local add-on fees as a source of revenue.

2015 Fines and Fees County Survey

As Reported by Circuit Clerk's Office in July 2015

Civil Fees	Stat. Range	Cook	DeKalb	DuPage	Knox
Circuit Clerk Fee - Filing	$10-$240	$22-$240	$10-$150	$15-$190	$10-$75
Circuit Clerk Fee - Appearance	$15-$110	$80-$110	$5-$50	$40-$75	$10-$25
Court Automation Fee	$1-$25	$15.00	$25.00	$15.00	$25.00
Document Storage Fee	$1-$25	$15.00	$25.00	$15.00	$25.00
Court Fee	$5	$5.00	$5.00	$5.00	$5.00
Court Security Fee	$0-$25	$25.00	$25.00	$25.00	$25.00
Law Library Fee	$2-$21	$21.00	$10.00	$13.00	$10.00
Mandatory Arbitration Fee	$8 or $10	$10.00	$0.00	$8.00	$0.00
Neutral Custody Fee	$1-$10	$0.00	$8.00	$8.00	$0.00
Children's Waiting Room Fee	$0-$10	$10.00	$10.00	$3.00	$0.00
Dispute Resolution Fee	$1	$1.00	$0.00	$0.00	$0.00
Misc. Fees Specific to County				$8.00	$5.00
Total Filing Fee		$124-$342	$118-$258	$115-$268	$100-$165
Total Appearance Fee		$176-$206	$108-$153	$140-$175	$100-$115
Jury Demand Fee	$12.50-$230	$12.50\$230	$12.50\$212.50	$12.50\$212.50	$12.50\$210
Alt Juror Fee		$0.00	$25.00	$0.00	$0 or $250

Civil Fees	Stat. Range	Macoupin	Madison	McHenry	McLean
Circuit Clerk Fee - Filing	$10-$240	$15-$131	$10-$160	$10-$160	$10-$160
Circuit Clerk Fee - Appearance	$15-$110	$35-56	$20-$60	$30-$60	$30-$60
Court Automation Fee	$1-$25	$5-$15	$5.00	$15.00	$20.00
Document Storage Fee	$1-$25	$5-$15	$15.00	$15.00	$15.00
Court Fee	$5	$5.00	$5.00	$5.00	$5.00
Court Security Fee	$0-$25	$5-$25	$15.00	$20.00	$25.00
Law Library Fee	$2-$21	$5-$19	$6.00	$18.00	$10.00
Mandatory Arbitration Fee	$8 or $10	$0.00	$8.00	$8.00	$8.00
Neutral Custody Fee	$1-$10	$0.00	$2.00	$0.00	$8.00
Children's Waiting Room Fee	$0-$10	$0.00	$0.00	$0.00	$5.00
Dispute Resolution Fee	$1	$0.00	$0.00	$0.00	$0.00
Misc. Fees Specific to County			$5.00		$5.00
Total Filing Fee		$55-$210	$66-$216	$91-$241	$106-$256
Total Appearance Fee		$55-$110	$76-$116	$106-$136	$126-$156
Jury Demand Fee	$12.50-$230	$12.50\$212.50	$12.50\$212.50	$12.50\$212.50	$12.50\$212.50
Alt Juror Fee		$0.00	$0.00	$0.00	$0 or $35

Civil Fees	Stat. Range	Pope	St. Clair	Will
Circuit Clerk Fee - Filing	$10-$240	$10-$160	$10-$160	$15-$190
Circuit Clerk Fee - Appearance	$15-$110	$30-$60	$30-$60	$40-$75
Court Automation Fee	$1-$25	$15.00	$25.00	$15.00
Document Storage Fee	$1-$25	$15.00	$25.00	$15.00
Court Fee	$5	$5.00	$5.00	$5.00
Court Security Fee	$0-$25	$25.00	$25.00	$25.00
Law Library Fee	$2-$21	$13.00	$13.00	$13.00
Mandatory Arbitration Fee	$8 or $10	$0.00	$8.00	$8.00
Neutral Custody Fee	$1-$10	$0.00	$5.00	$5.00
Children's Waiting Room Fee	$0-$10	$0.00	$0.00	$0.00
Dispute Resolution Fee	$1	$1.00	$0.00	$0.00
Misc. Fees Specific to County			$5.00	$25.00
Total Filing Fee		$84-$234	$116-$266	$126-$301
Total Appearance Fee		$98-$128	$136-$166	$151-$186
Jury Demand Fee	$12.50-$230	$12.50\$212.50	$12.50\$106.25	$12.50\$212.50
Alt Juror Fee		$0.00	$0.00	$0 or $2.50

Figure 15

Criminal/Traffic Proceedings

This large variation between counties regarding the amount of assessments imposed in the same kind of cases is not unique to civil actions and, in fact, is more pronounced in criminal cases. As in the civil context, counties have some discretion over which charges to assess, and the size of those charges. This local discretion precludes uniformity and means that criminal defendants facing the exact same charges can have very different assessments imposed on them, depending on the county in which the case is heard.

Figures 16-18 illustrate this variability. Figures 17 and 18 examine the amount of assessments that were recently imposed in Macoupin and McLean Counties, respectively, with respect to defendants who received a $150 fine for driving under the influence of alcohol. Both counties started with a base fee of $75. Both counties charged the defendants fees to subsidize the cost of court automation, document storage, and court security. Both counties also charged the defendants a fee for the state's attorney's office that prosecuted the case. The substantial discrepancy between the total assessments imposed by the two counties relates to the local and state add-on fees. While Macoupin County added seven state and local fees totaling $197, McLean County added 15 state and local fees totaling $1560. The $75 base fee of the McLean County defendant thereby increased by more than 2,400% and that defendant paid nearly five times more than the Macoupin County defendant for the exact same offense.

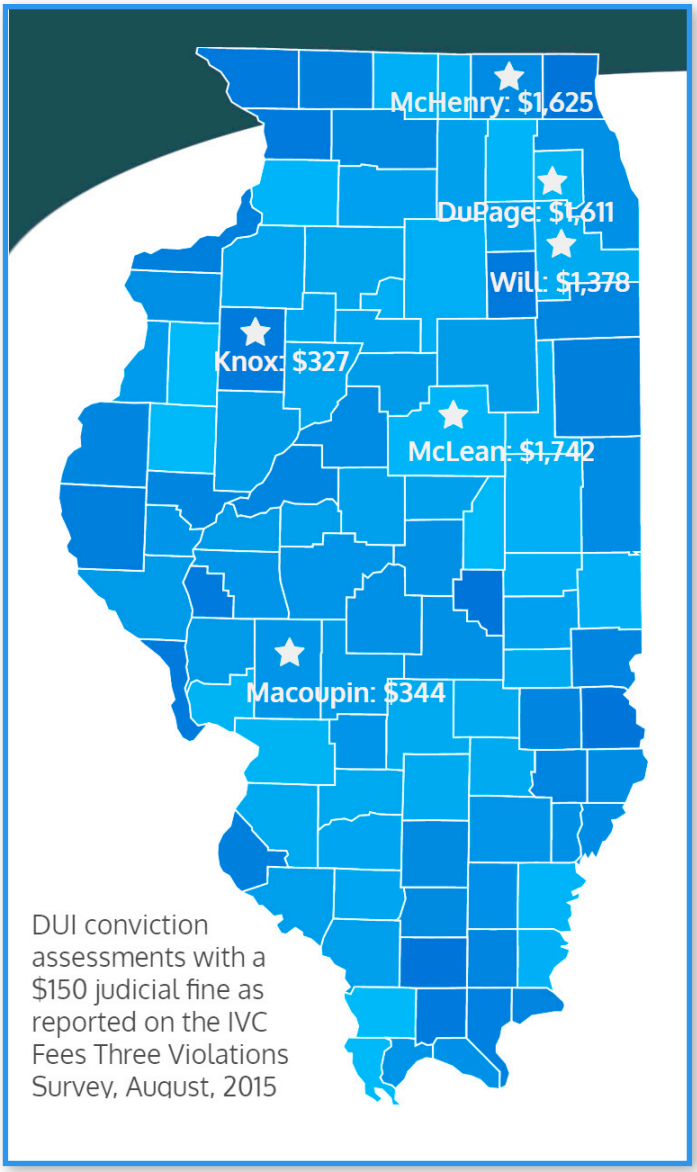


Figure 16

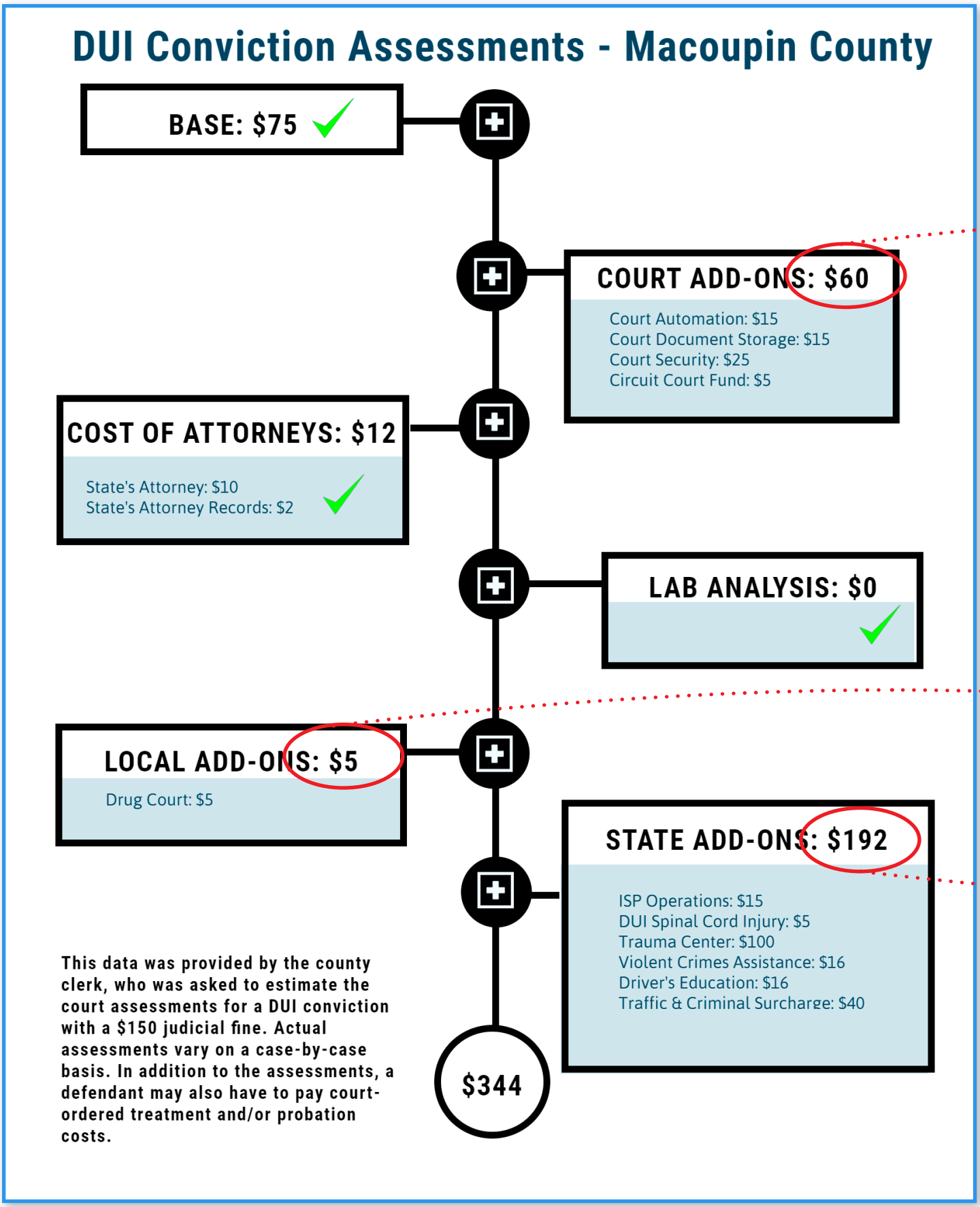

DUI Conviction Assessments - Macoupin County
BASE: $75
COURT ADD-ONS: $60
Court Automation: $15
Court Document Storage: $15
Court Security: $25
Circuit Court Fund: $5
COST OF ATTORNEYS: $12
State's Attorney: $10
State's Attorney Records: $2
LAB ANALYSIS: $0
LOCAL ADD-ONS: $5
Drug Court: $5
STATE ADD-ONS: $192
ISP Operations: $15
DUI Spinal Cord Injury: $5
Trauma Center: $100
Violent Crimes Assistance: $16
Driver's Education: $16
Traffic & Criminal Surcharge: $40
$344
This data was provided by the county clerk, who was asked to estimate the court assessments for a DUI conviction with a $150 judicial fine. Actual assessments vary on a case-by-case basis. In addition to the assessments, a defendant may also have to pay court-ordered treatment and/or probation costs.

Figure 17

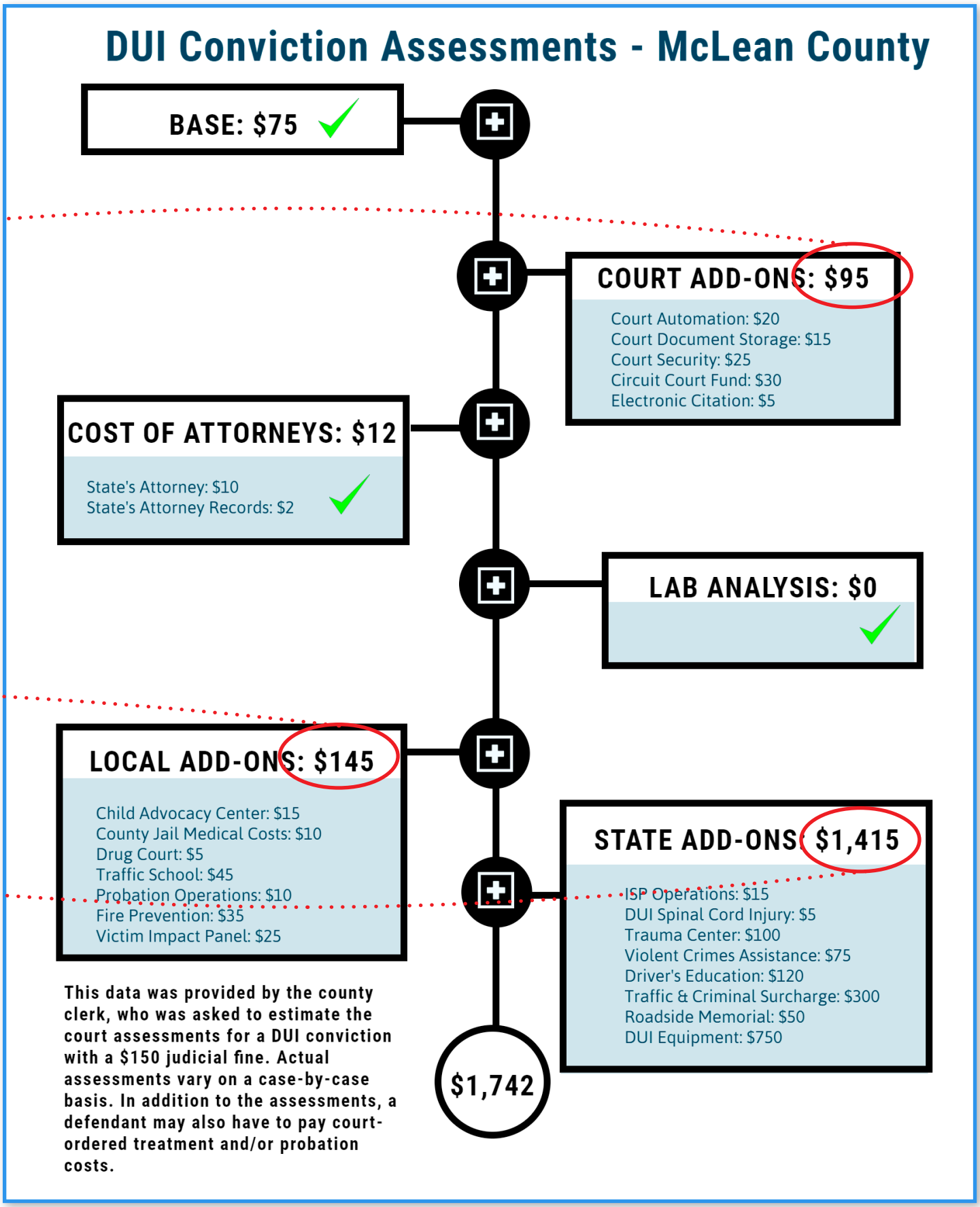

DUI Conviction Assessments - McLean County
BASE: $75
COURT ADD-ONS: $95
Court Automation: $20
Court Document Storage: $15
Court Security: $25
Circuit Court Fund: $30
Electronic Citation: $5
COST OF ATTORNEYS: $12
State's Attorney: $10
State's Attorney Records: $2
LAB ANALYSIS: $0
LOCAL ADD-ONS: $145
Child Advocacy Center: $15
County Jail Medical Costs: $10
Drug Court: $5
Traffic School: $45
Probation Operations: $10
Fire Prevention: $35
Victim Impact Panel: $25
STATE ADD-ONS: $1,415
ISP Operations: $15
DUI Spinal Cord Injury: $5
Trauma Center: $100
Violent Crimes Assistance: $75
Driver's Education: $120
Traffic & Criminal Surcharge: $300
Roadside Memorial: $50
DUI Equipment: $750
$1,742
This data was provided by the county clerk, who was asked to estimate the court assessments for a DUI conviction with a $150 judicial fine. Actual assessments vary on a case-by-case basis. In addition to the assessments, a defendant may also have to pay court-ordered treatment and/or probation costs.

Figure 18

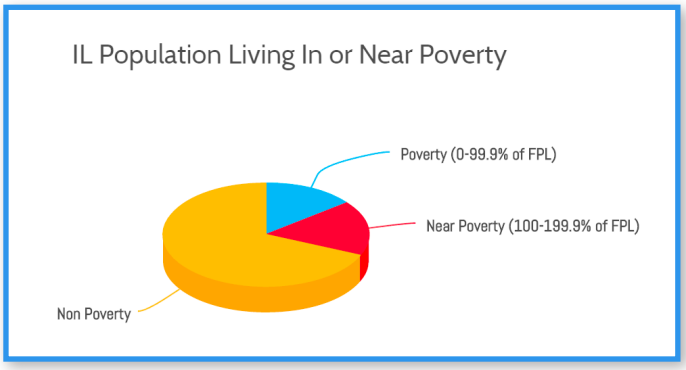
Finding #4: The cumulative impact of the assessments imposed on parties to civil lawsuits and defendants in criminal and traffic proceedings imposes severe and disproportionate impacts on low- and moderate-income Illinois residents.

The rapid rise of court assessments has caused financial and other hardships which are disproportionately borne by modest and low-income litigants. In the criminal courts, where there is currently no formal process in place for waiving or reducing fees, an indigent defendant may be forced to decide between paying court debt or covering basic living expenses like rent and medical bills. In the case of civil litigation, high filing fees may force financially insecure litigants to opt out of participation in important civil cases altogether.

The 2016 Federal Poverty Guidelines set the poverty threshold at an annual income of $11,880 for a family of one and $24,300 for a family of four.[31] In 2014, 14.4% of Illinois residents lived below the poverty line.[32] Yet another 17.2% of the population, over 2 million individuals, lived between 100% and 200% of the federal poverty threshold.[33] Between 1997 and 2011, the share of working families in Illinois living at or below 200% of the federal poverty guideline increased by 5%, one of the largest increases in the nation.[34] The increased number of working poor can be seen in courthouses across the country on a daily basis as the number of litigants appearing without attorneys continues to rise.[35] These litigants, already struggling to navigate a complex and confusing legal system during times of crisis, often face hundreds of dollars in court fees simply to participate in the process.

Illinois has taken modest steps to address this growing problem. Under Illinois Supreme Court Rule 298 and ILCS 735 ILCS 5/5-105, civil courts will consider fee waiver applications from indigent civil litigants, defined as individuals receiving certain federal benefits or earning less than 125% of the federal

Figure 19



Nearly one-third of Illinois residents are living in or near poverty. 14.4% are living below poverty level, and 31.6% are living within 199% of the poverty level.

Figure 20

[31] U.S. Department of Health and Human Services, *HHS Poverty Guidelines for 2016* (January 2016), available at https://aspe.hhs.gov/poverty-guidelines.
[32] Social Impact Research Center, *Poor by Comparison: Report on Illinois Poverty* (January 2015), p.2; available at http://www.ilpovertyreport.org/.
[33] *Id.*
[34] The Working Poor Families Project, *Low-Income Working Families: The Growing Economic* Gap, p.6; available at http://www.workingpoorfamilies.org/wp-content/uploads/2013/01/Winter-2012_2013-WPFP-Data-Brief.pdf.
[35] An estimated 60% of civil litigants nationwide are self-represented. *See generally*, http://www.srln.org/.

poverty level set annually by the United States Department of Health and Human Services. While the civil fee waiver provision has been an important and much needed first step in promoting equal access to the courts, the current rule still excludes far too many people, including all criminal defendants (including those who would have qualified for a civil fee waiver) and the rapidly growing class of Illinois residents who can be described as the working poor. Many of those individuals and families earn too much to qualify for the extremely low poverty cutoffs used by most legal aid and pro bono programs, but earn too little to pay hefty court fees without suffering serious financial hardship.

In 2015, as exemplified in the discussion above, the initial filing fees for a dissolution of marriage case in Illinois ranged from $165 in Knox County to $342 in Cook County. For an individual living on only $1,250 a month, for example, these court fees can present an insurmountable barrier to accessing the court system. Despite the obvious financial challenges, that same individual would not qualify for a fee waiver, a reduction in court costs, or for assistance from a legal aid organization or pro bono program that uses the standard 125% federal poverty level cutoff. Furthermore, while the poorest civil litigants currently receive some relief from the rising court fees, there is no analogous provision for criminal fee waivers. Rule 298 does not extend to indigent criminal defendants, who may qualify for free legal representation through the public defender's office but still find themselves hundreds or even thousands of dollars in debt at the conclusion of the case.

Criminal court fees can have the unintended and counterproductive consequence of burdening a criminal defendant's reentry into society and increasing the potential for recidivism.[36] Court-imposed fees impact credit scores, making it difficult for criminal defendants to rent or purchase homes. Unpaid fees also interfere with efforts to expunge or seal criminal records, which can in turn lead to termination from employment or additional hurdles that must be cleared to secure new employment. On top of that, a criminal defendant may risk suspension of their driver's license if they cannot afford to pay the fees, further burdening their ability to reintegrate into society and return to school or work. Without stable housing, employment, and transportation, a formerly incarcerated individual may return to criminal activity to cover their expenses, including crippling court debt. [37] Furthermore, these fees do not take into account the punitive criminal fines that may attach at the end of criminal litigation and create additional financial burdens.

A relatively small percentage of assessments imposed in criminal cases is ever collected. Compared to any revenue that they generate, the administrative burden that such assessments impose on court clerks is substantial because criminal cases are not closed if assessments have not been paid.

[36] U.S. Department of Health and Human Services, *HHS Poverty Guidelines for 2016* (January 2016), available at https://aspe.hhs.gov/poverty-guidelines.

[37] Social Impact Research Center, *Poor by Comparison: Report on Illinois Poverty* (January 2015), p.2; available at http://www.ilpovertyreport.org/.

[38] Center for Justice, *Criminal Justice Debt: A Barrier to Reentry*, 27-30 (2010), available at http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf.

VII. Core Principles

In developing proposed legislation and court rules to address the problems identified in the findings discussed in the preceding section of this Report, the Task Force was guided by the following core principles. The Task Force appreciates the tension between some of these principles and the realities of government, the state of the Illinois economy, and the difficulty of effecting change that in certain respects may require a culture shift. Accordingly, these core principles can be viewed as guideposts that the Task Force hopes will direct reasoned and constructive thinking towards renewed balance among competing interests bearing on the system of court assessments in our state.

1. ***Role of Assessments in Funding the Courts.*** Courts should be substantially funded from general government revenue sources. Court users may be required to pay reasonable assessments to offset a portion of the cost of the courts borne by the public-at-large.

2. ***Relationship Between Assessments and Access to the Courts.*** The amount of assessments should not impede access to the courts and should be waived, to the extent possible, for indigent litigants and the working poor.

3. ***Transparency and Uniformity.*** Assessments should be simple, easy to understand, and uniform to the extent possible.

4. ***Relationship Between Assessments and Their Underlying Rationale.*** Assessments should be directly related to the operation of the court system. Assessments imposed for a particular purpose should be limited to the types of court proceedings that are related to that purpose. Monies raised by assessments intended for a specific purpose should be used only for that purpose.

5. ***Periodic Review.*** The General Assembly should periodically review all assessments to determine if they should be adjusted or repealed.

VIII. Recommendations

Civil Proceedings

1. **The General Assembly should authorize an assessment schedule for civil cases that promotes affordability and transparency.**

The Task Force proposes simplifying and streamlining the current system by creating a new Court Clerk Assessment Act that replaces all statutory fees currently scattered throughout the Illinois Compiled Statutes. Set forth in Appendix A to this Report, the Act contains four assessment schedules, each with a maximum filing fee, appearance fee, and other authorized fees. The Supreme Court would assign each case type to one of the assessment schedules.

Each of the filing fees and appearance fees authorized under the new Act would be broken down into three components: the Court Fee; the County Fee; and the State Fee. The Act provides discretion to set the amount of each of those three fees, within the overall limits for the filing fee and appearance fee established by the Act for the applicable assessment schedule. The Act also provides discretion to allocate the Court Fee, the County Fee, and the State Fee among the different purposes authorized by the Act. In that way, assessments would generally no longer be earmarked by state law for special funds or projects, but would instead be collected akin to a block grant that would afford counties broader discretion regarding the purposes for which assessments are collected and the amount devoted to each of those purposes.

The Task Force recommends that the amounts set forth in the Act serve as maximums, rather than fixed amounts, thereby authorizing the counties to charge less if they wish to do so. While the Task Force appreciates that uniformity is an important goal, it also recognizes that affordability is an equally important one and cannot recommend requiring counties to charge more than they need for no reason other than consistency.

The proposed Court Clerk Assessment Act also includes some assessments – such as fees for copying court records, providing certified copies, and mailing documents – that are not limited to civil actions.

2. **The General Assembly and the Supreme Court should authorize amendments to the current civil fee waiver statute and related Supreme Court Rule to provide financial relief from assessments in civil cases to Illinois residents living in or near poverty.**

The Task Force proposes broadening the current fee waiver statute and related Supreme Court Rule by adding a sliding scale fee waiver based on income. Litigants whose income is 125% or less of the current poverty level, or who are otherwise eligible for fee waivers under existing law, would continue to be eligible for full waivers. Litigants whose income is between 125% and 200% of the poverty level would be eligible for waivers on a sliding scale ranging from 75% to 25%. This will extend financial protections already offered to indigent civil litigants to the working poor.

Clean and redlined versions of the proposed civil fee waiver statute, with the redlining identifying amendments to the current fee waiver statute, are contained in Appendix B to this Report. Clean and redlined versions of Supreme Court Rule 298, the rule concerning fee waivers in civil cases, are contained in Appendix C.

Fee waivers will not eliminate all of the financial burdens and other obstacles faced by litigants trying to participate fully in the justice system. Many litigants will still struggle to take time off from work, secure child care, and pay for transportation to and parking at the courthouse. However, waiving or reducing fees for the poorest litigants is a logical step forward in aspiring to ensure that all Illinois residents can access the court system in a fair and equitable manner, and that no one is forced to choose between being able to participate in court proceedings and pay their basic living expenses.

The Task Force also proposes expanding a judge's discretion to reconsider the fee waiver prior to the final disposition of the case if the judge has reason to believe the litigant was not entitled to the initial fee waiver or if there has been change in circumstances such that the litigant is able to pay fees going forward. Additionally, the Task Force proposes that the fee waiver expires after one year, but can be renewed upon a showing of continued eligibility.

Criminal/Traffic Proceedings

3. **The General Assembly should authorize a uniform assessment schedule for criminal and traffic case types that is consistent throughout the state.**

The Task Force proposes creating a new criminal assessment schedule system to promote uniformity, consistency, and a reasonable connection between the assessment and the crime. Contained in Appendix D to this Report, the proposed Criminal/Traffic Assessment Act would codify in one statute all of the court fees and fines imposed at the conclusion of those proceedings. Every offense would be assigned to a particular assessment schedule. Every court in the state would follow the same schedule.

This proposal would make the process of calculating fees and fines more transparent – all of the costs would be clearly explained in one place rather than the current piecemeal system where they are buried in dozens of pieces of legislation. This would also create statewide consistency.

Additionally, the Task Force recommends eliminating some currently authorized court assessments to reduce the overall financial burden imposed on defendants and ensure that existing assessments have an appropriate nexus to the crime so that a defendant is not paying for something unrelated to the offense.

4. **The General Assembly and the Supreme Court should authorize the waiver or reduction of assessments, but not fines, imposed on criminal defendants living in or near poverty.**

The Task Force proposes creation of a criminal assessment waiver statute with a sliding scale that would be similar to the proposed amendment to the civil fee waiver statute. The statute would be complemented by a Supreme Court Rule analogous to the rule that implements the civil fee waiver statute. The proposed criminal assessment waiver statute and Supreme Court Rule 404 are contained in Appendices E and F, respectively, of this Report.

The proposed statute and rule would extend the financial protections offered to indigent civil litigants to their counterparts in the criminal justice system. The criminal assessment waiver would cover all assessments authorized by the new Criminal/Traffic Assesment Act, but would not cover punitive fines or restitution ordered by a judge. This would ensure that criminal defendants still face meaningful punishment if convicted. It would also encourage judges to tailor punishments to more carefully fit the crime by using their discretionary powers to assess fines based on the nature of the crime committed, rather than simply letting court assessments act as punitive fines.

While criminal defendants should face meaningful punishment for committing a crime, it is unjust and unwise to burden indigent criminal defendants with court assessments that are beyond their ability to pay and that create a disproportionate and counterproductive barrier to their reentry into society. Rather than levy such assessments, which also impose administrative burdens on court clerks that are unwarranted by the potential amounts to be collected, it is preferable to allow judges to grant waivers. Such waivers would facilitate judges' ability to impose fines (that, unlike fees, are designed to punish) at amounts that are commensurate with the crime. Moreover, unlike assessments, in appropriate cases judges can authorize fines to be worked off through community service or similar programs.

5. **The General Assembly and the Supreme Court should modify the process by which minor traffic offense fines are calculated under Supreme Court Rule 529.**

Current Supreme Court Rule 529 provides that all fines, penalties, and costs are to be set equal to bail upon a plea of guilty to a minor traffic violation not requiring a court appearance. Since the early 1980s, the General Assembly has enacted many new user fees and surcharges on minor traffic violations. This has reduced the amount of revenue for counties and local law enforcement agencies since the total ticket fines, penalties, and costs are fixed (tied to bail), but the ticket revenue is now shared with many additional public bodies. The Supreme Court has responded by increasing bail, which helps with counties and local law enforcement agencies, but creates tension with the objective of setting bail at the minimum amount necessary to ensure the defendant's appearance at trial.

To address this tension, the Task Force proposes severing the link between the amount of bail and the fine in minor traffic cases. Instead, Schedule 12 of the proposed Criminal/Traffic Assessment Act (Appx. D hereto), sets the amount of fines, penalties and costs at a uniform amount of $150. Related proposed revisions to Supreme Court Rule 529 are contained in Appendix G.

General Recommendations

6. **The Illinois General Assembly should routinely consult a checklist of important considerations before proposing new assessments, and should periodically consult the checklist in reviewing existing assessments.**

To support the consolidation of all assessments in a single act and in an effort to alleviate some of the confusion in implementing certain assessments, the Task Force proposes a Checklist for Review of New Assessment Legislation for the General Assembly to consult before creating new assessments. Contained in Appendix H to this Report, the checklist is intended to guide the General Assembly in ensuring that: any new assessment is added to the correct part of the statute; implementation dates are consistent; the statute clearly describes the recipients of the new assessment; the triggering event for collecting the assessment is clear; and the statute clearly states whether the new assessment impacts the total value of a schedule or whether it modifies distribution of the existing amount.

IX. Conclusion

This report documents pervasive and fundamental problems with the imposition of court assessments in judicial proceedings in our state. Implementation of the recommendations developed by the Task Force is urgently needed to address the barriers to access to justice and excessive financial burdens associated with court assessments that are undermining the court system's ability to provide fair and equal justice for all.

Respectfully submitted,

STATUTORY COURT FEE TASK FORCE

Steven F. Pflaum, Chair

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Chasity Boyce

(Ret.) Judge Steven Culliton

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(Ret.) Judge John P. Freese

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Circuit Clerk Katherine M. Keefe

John Maki

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Representative Elaine Nekritz

Senator Dale Righter

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Adam Vaught

APPENDIX

Appendix A – Proposed Court Clerk Assessment Act

Proposed Court Clerk Assessment Act, 705 ILCS 105/27.1

(This Act replaces the provisions of the Clerk of Courts Act that authorize fees for the services performed by clerks of the circuit court described in this statute)

Sec. 27.1. Notwithstanding any other provision of law, all fees charged by the clerks of the circuit court for the services described in this Section shall be established, collected, and disbursed in accordance with this Section. All such fees shall be paid in advance and disbursed by each clerk on a monthly basis. Unless otherwise specified in this Section, the amount of a fee shall be determined by ordinance or resolution of the county board and remitted to the County Treasurer to be used for purposes related to the operation of the court system in the county.

(a) Civil Cases.

The fee for filing a complaint, petition, or other pleading initiating a civil action shall be governed by one of the following schedules in accordance with case categories established by the Supreme Court.

(1) Schedule 1 – not to exceed a total of $280.00

The fees collected from this schedule shall be disbursed as follows:

A. The clerk shall retain a sum, in an amount not to exceed $45.00 determined by the clerk with the approval of the Supreme Court, to be used for court automation, court document storage, and administrative purposes.

B. The clerk shall remit up to $12.00 to the State Treasurer with instructions to deposit the appropriate amounts into the following funds:

i. Up to $10.00, as specified by the Supreme Court in relation to its authorization for a county to utilize mandatory arbitration, to the Mandatory Arbitration Fund; and

ii. $2.00 to the Access to Justice Fund.

C. The clerk shall remit a sum to the County Treasurer, in an amount not to exceed $223.00 specified by ordinance or resolution passed by the county board, for purposes related to the operation of the court system in the county.

(2) Schedule 2 – not to exceed a total of $180.00

The fees collected from this schedule shall be disbursed as follows:

A. The clerk shall retain a sum, in an amount not to exceed $45.00 determined by the clerk with the approval of the Supreme Court, to be used for court automation, court document storage, and administrative purposes.

B. The clerk shall remit up to $12.00 to the State Treasurer with instructions to deposit the appropriate amounts into the following funds:

i. Up to $10.00, as specified by the Supreme Court in relation to its authorization for a county to utilize mandatory arbitration, to the Mandatory Arbitration Fund; and

ii. $2.00 to the Access to Justice Fund.

C. The clerk shall remit a sum to the County Treasurer, in an amount not to exceed $123.00 specified by ordinance or resolution passed by the county board, for purposes related to the operation of the court system in the county.

(3) Schedule 3 – not to exceed a total of $80.00

The fees collected from this schedule shall be disbursed as follows:

A. The clerk shall retain a sum, in an amount not to exceed $22.00 determined by the clerk with the approval of the Supreme Court, to be used for court automation, court document storage, and administrative purposes.

B. The clerk shall remit $2.00 to the State Treasurer for deposit into the Access to Justice Fund.

C. The clerk shall remit a sum to the County Treasurer, in an amount not to exceed $56.00 specified by ordinance or resolution passed by the county board, for purposes related to the operation of the court system in the county.

(4) Schedule 4 - $0.00

(b) Appearance.

The fee for filing an appearance in a civil action shall be governed by one of the following schedules in accordance with case categories established by the Supreme Court.

(1) Schedule 1 – not to exceed a total of $140.00

The fees collected from this schedule shall be disbursed as follows:

A. The clerk shall retain a sum, in an amount up to $28.00 determined by the clerk with the approval of the Supreme Court, to be used for court automation, court document storage, and administrative purposes.

B. The clerk shall remit up to $12.00 to the State Treasurer with instructions for the Treasurer to deposit the appropriate amounts into the following funds:

i. Up to $10.00, as specified by the Supreme Court in relation to its authorization for a county to utilize mandatory arbitration; and

ii. $2.00 to the Access to Justice Fund.

C. The clerk shall remit a sum to the County Treasurer, in an amount up to $100.00 specified by ordinance or resolution passed by the county board, for purposes related to the operation of the court system in the county.

(2) Schedule 2 – not to exceed a total of $40.00

The fees collected from this schedule shall be disbursed as follows:

A. The clerk shall retain a sum, in an amount up to $10.00 determined by the clerk with the approval of the Supreme Court, to be used for court automation, court document storage, and administrative purposes.

B. The clerk shall remit a sum to the County Treasurer, in an amount up to $30.00 specified by ordinance or resolution passed by the county board, for purposes related to the operation of the court system in the county.

(3) Schedule 3 - $0.00

(c) Counterclaim or Third-Party Complaint.

When any defendant files a counterclaim or third-party complaint as part of the defendant's answer or otherwise, the defendant shall pay a filing fee for each counterclaim or third-party complaint in an amount equal to the filing fee the defendant would have had to pay had the defendant brought a separate action for the relief sought

in the counterclaim or third-party complaint, less the amount of the appearance fee, if any, that the defendant has already paid in the action in which the counterclaim or third-party complaint is filed.

(d) Alias Summons.
There shall be a fee not to exceed $5.00 for each alias summons or citation issued by the clerk.

(e) Jury Services

The clerk shall be entitled to receive, in addition to other fees allowed by law, a sum not to exceed $212.50, as a fee for the services of a jury in every civil action not quasi-criminal in its nature and not a proceeding for the exercise of the right of eminent domain and in every other action wherein the right of trial by jury is or may be given by law. The jury fee shall be paid by the party demanding a jury at the time of filing the jury demand. If the fee is not paid by either party, no jury shall be called in the action or proceeding, and the same shall be tried by the court without a jury.

(f) Change of Venue.

In connection with a change of venue:

(1) The clerk of the jurisdiction from which the case is transferred may charge a fee, not to exceed $40.00, for the preparation and certification of the record; and

(2) The clerk of the jurisdiction to which the case is transferred may charge the same filing fee as if it were the commencement of a new suit.

(g) Petition to Vacate or Modify.

(1) In a proceeding involving a petition to vacate or modify any final judgment or order filed within 30 days after the judgment or order was entered – except for a forcible entry and detainer case, small claims case, petition to reopen an estate, petition to modify, terminate, or enforce a judgment or order for child or spousal support, or petition to modify, suspend, or terminate an order for withholding – the fee shall not exceed $50.00.

(2) In a proceeding involving a petition to vacate or modify any final judgment or order filed more than 30 days after the judgment or order was entered – except for a petition to modify, terminate, or enforce a judgment or order for child or spousal support, or petition to modify, suspend, or terminate an order for withholding – the fee shall not exceed $75.00.

(3) In a proceeding involving a motion to vacate or amend a final order, motion to vacate an *ex parte* judgment, judgment of forfeiture, or "failure to appear" or "failure to comply" notices sent to the Secretary of State, the fee shall equal $40.00.

(h) Appeals Preparation.

The fee for preparation of a record on appeal shall be based on the number of pages, as follows:

(1) If the record contains less than 100 pages, the fee shall not exceed $50.00;

(2) If the record contains between 100 and 200 pages, the fee shall not exceed $100.00; and

(3) If the record contains more than 200 pages, there may be an additional fee not to exceed 25 cents per page.

(i) Remands.
In any cases remanded to the Circuit Court from the Supreme Court or the Appellate Court for a new trial, the clerk shall reinstate the case with either its original number or a new number. The Clerk shall not charge any new or additional fee for the reinstatement. Upon reinstatement the Clerk shall advise the parties of the

reinstatement. Parties shall have the same right to a jury trial on remand and reinstatement that they had before the appeal, and no additional or new fee or charge shall be made for a jury trial after remand.

(j) Garnishment, Wage Deduction, and Citation.

In garnishment affidavit, wage deduction affidavit, and citation petition proceedings, if the amount in controversy in the proceeding:

(1) Does not exceed $1,000.00, the fee may not exceed $15.00;

(2) Is between $1,000.01 and $5,000.00, the fee may not exceed $30.00; and

(3) Exceeds $5,000.00, the fee may not exceed $50.00.

(k) Collections.

(1) For all collections made of others, except the State and county and except in maintenance or child support cases, the clerk may collect a fee of up to 2.5% of the amount collected and turned over.

(2) In child support and maintenance cases, the clerk may collect an annual fee of up to $36.00 from the person making payment for maintaining child support records and the processing of support orders to the State of Illinois KIDS system and the recording of payments issued by the State Disbursement Unit for the official record of the Court. This fee shall be in addition to and separate from amounts ordered to be paid as maintenance or child support and shall be deposited into a Separate Maintenance and Child Support Collection Fund, of which the clerk shall be the custodian, *ex-officio*, to be used by the clerk to maintain child support orders and record all payments issued by the State Disbursement Unit for the official record of the Court. The clerk may recover from the person making the maintenance or child support payment any additional cost incurred in the collection of this annual fee.

(3) The clerk shall also be entitled to a fee of $5.00 for certifications made to the Secretary of State as provided in Section 7-703 of the Family Financial Responsibility Law and these fees shall also be deposited into the Separate Maintenance and Child Support Collection Fund.

(l) Mailing.

The fee for the clerk mailing documents shall not exceed $10.00 plus the cost of postage.

(m) Certified Copies.

The fee for each certified copy of a judgment, after the first copy, shall not exceed $10.00.

(n) Certification, Authentication, and Reproduction.

(1) The fee for each certification or authentication for taking the acknowledgment of a deed or other instrument in writing with the seal of office shall not exceed $6.00.

(2) The fee for reproduction of any document contained in the clerk's files shall not exceed:

A. $2.00 for the first page;

B. 50 cents per page for the next 19 pages; and

C. 25 cents per page for all additional pages.

(o) Record Search.

For each record search, within a division or municipal district, the clerk shall be entitled to a search fee not to exceed $6.00 for each year searched.

(p) Hard Copy

For each page of hard copy print output, when case records are maintained on an automated medium, the clerk shall be entitled to a fee not to exceed $6.00.

(q) Index Inquiry and Other Records.

No fee shall be charged for a single plaintiff/defendant index inquiry or single case record inquiry when this request is made in person and the records are maintained in a current automated medium, and when no hard copy print output is requested. The fees to be charged for management records, multiple case records, and multiple journal records may be specified by the Chief Judge pursuant to the guidelines for access and dissemination of information approved by the Supreme Court.

(r) Performing a marriage.

There shall be a $10.00 fee for performing a marriage in court.

(s) Voluntary Assignment.

For filing each deed of voluntary assignment, a fee not to exceed $20.00; for recording the same, a fee not to exceed 50 cents for each 100 words. Exceptions filed to claims presented to an assignee of a debtor who has made a voluntary assignment for the benefit of creditors shall be considered and treated, for the purpose of taxing costs therein, as actions in which the party or parties filing the exceptions shall be considered as party or parties plaintiff, and the claimant or claimants as party or parties defendant, and those parties respectively shall pay to the clerk the same fees as provided by this Section to be paid in other actions.

(t) Expungement Petition.

The clerk shall be entitled to receive a fee not to exceed $60.00 for each expungement petition filed and an additional fee not to exceed $4.00 for each certified copy of an order to expunge arrest records.

(u) Transcripts of Judgment.

For the filing of a transcript of judgment, the clerk shall be entitled to the same fee as if it were the commencement of a new suit.

(v) Probate filings.

(1) For each account (other than one final account) filed in the estate of a decedent, or ward, the fee shall not exceed $25.00.

(2) For filing a claim in an estate when the amount claimed is between $150.00 and $500.00, the fee shall not exceed $25.00; when the amount claimed is between $500.01 and $10,000.00, the fee shall not exceed $40.00; and when the amount claimed is more than $10,000.00, the fee shall not exceed $60.00; provided that the court in allowing a claim may add to the amount allowed the filing fee paid by the claimant.

(3) For filing in an estate a claim, petition, or supplemental proceeding based upon an action seeking equitable relief including the construction or contest of a will, enforcement of a contract to make a will, and proceedings involving testamentary trusts or the appointment of testamentary trustees, the fee shall not exceed $60.00.

(4) For filing in an estate (i) the appearance of any person for the purpose of consent or (ii) the appearance of an executor, administrator, administrator to collect, guardian, guardian ad litem, or special administrator, there shall be no fee.

(5) For each jury demand, the fee shall not exceed $137.50.

(6) For each certified copy of letters of office, of court order or other certification, the fee shall not exceed $2.00 per page.

(7) For each exemplification, the fee shall not exceed $2.00, plus the fee for certification.

(8) The executor, administrator, guardian, petitioner, or other interested person or his or her attorney shall pay the cost of publication by the clerk directly to the newspaper.

(9) The person on whose behalf a charge is incurred for witness, court reporter, appraiser, or other miscellaneous fee shall pay the same directly to the person entitled thereto.

(10) The executor, administrator, guardian, petitioner, or other interested person or his or her attorney shall pay to the clerk all postage charges incurred by the clerk in mailing petitions, orders, notices, or other documents pursuant to the provisions of the Probate Act of 1975.

(w) Corrections of Numbers.

For correction of the case number, case title, or attorney computer identification number, if required by rule of court, on any document filed in the clerk's office, to be charged against the party that filed the document, the fee shall not exceed $25.00.

(x) Miscellaneous.

(1) Interest earned on any fees collected by the clerk shall be turned over to the county general fund as an earning of the office.

(2) For any check, draft, or other bank instrument returned to the clerk for non-sufficient funds, account closed, or payment stopped, there shall be a fee of $25.00.

(y) Other Fees.

The clerk of the circuit court may provide services in connection with the operation of the clerk's office, other than those services mentioned in this Section, as may be requested by the public and agreed to by the clerk and approved by the Chief Judge. Any charges for such additional services shall be as agreed to between the clerk and the party making the request and approved by the Chief Judge. Nothing in this subsection shall be construed to require any clerk to provide any service not otherwise required by law.

(z) Exceptions.

(1) No fee authorized by this Section shall apply to:

A. Police departments or other law enforcement agencies. In this Section, "law enforcement agency" means an agency of the State or a unit of local government which is vested by law or ordinance with the duty to maintain public order and to enforce criminal laws or ordinances. "Law enforcement agency" also means the Attorney General or any state's attorney;

B. Any unit of local government or school district;

C. Any action instituted under subsection (b) of Section 11-31-1 of the Illinois Municipal Code by a private owner or tenant of real property within 1200 feet of a dangerous or unsafe building seeking an order compelling the owner or owners of the building to take any of the actions authorized under that subsection;

D. Any commitment petition or petition for an order authorizing the administration of psychotropic medication or electroconvulsive therapy under the Mental Health and Developmental Disabilities Code;

E. A petitioner in any order of protection proceeding including, but not limited to, filing, modifying, withdrawing, certifying, or photocopying petitions for orders of protection, or for issuing alias summons, or for any related filing service, certifying, modifying, vacating, or photocopying any orders of protection; or

F. Proceedings for the appointment of a confidential intermediary under the Adoption Act.

(2) No fee other than the filing fee contained in the applicable schedule in subsection (a) shall be charged to any person in connection with an adoption proceeding.

(3) Upon good cause shown, the court may waive any fees associated with a special needs adoption. The term "special needs adoption" shall have the meaning ascribed to it by the Illinois Department of Children and Family Services.

Appendix B – Proposed Amended Civil Assessment Waiver Statute

Proposed Amendments to Civil Assessment Waiver Statute, 735 ILCS 5/5-105

Clean Version

Sec. 5-105. Leave to sue or defend as an indigent person.

(a) As used in this Section:

(1) "Assessments, costs, and charges" means payments imposed on a party in connection with the prosecution or defense of a civil action, including, but not limited to: assessment set forth in 705 ILCS 105/27.1; fees for service of process and other papers served either within or outside this State, including service by publication pursuant to Section 2-206 of this Code and publication of necessary legal notices; motion fees; charges for participation in, or attendance at, any mandatory process or procedure including, but not limited to, conciliation, mediation, arbitration, counseling, evaluation, "Children First", "Focus on Children" or similar programs; fees for supplementary proceedings; charges for translation services; guardian ad litem fees; and all other processes and procedures deemed by the court to be necessary to commence, prosecute, defend, or enforce relief in a civil action.

(2) "Indigent person" means any person who meets one or more of the following criteria:

(i) He or she is receiving assistance under one or more of the following means based governmental public benefits programs: Supplemental Security Income (SSI), Aid to the Aged, Blind and Disabled (AABD), Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), General Assistance, Transitional Assistance, or State Children and Family Assistance.

(ii) His or her available income is 125% or less of the current poverty level, unless the applicant's assets that are not exempt under Part 9 or 10 of Article XII of this Code are of a nature and value that the court determines that the applicant is able to pay the assessments, costs, and charges.

(iii) He or she is, in the discretion of the court, unable to proceed in an action without payment of assessments, costs, and charges and whose payment of those assessments, costs, and charges would result in substantial hardship to the person or his or her family.

(iv) He or she is an indigent person pursuant to Section 5-105.5 of this Code.

(3) "Poverty level" means the current poverty level as established by the United States Department of Health and Human Services.

(b) On the application of any person, before or after the commencement of an action:

(1) If the court finds that the applicant is an indigent person, the applicant shall be granted a full assessment waiver entitling him or her to sue or defend the action without payment of any assessments, costs, or charges.

(2) If the court finds that the applicant satisfies any of the criteria contained in subsections (i), (ii), or (iii), the applicant shall be granted a partial assessment waiver entitling him or her to sue or defend the action upon payment of the applicable percentage of the assessments, costs, and charges of the action, as follows:

(i) 75% of all assessments, costs, and charges shall be waived if the applicant's available income is between 125% and 150% of the poverty level, unless the applicant's assets that are not exempt under Part 9 or 10 of Article XII of this Code are such that the applicant is able, without undue hardship, to pay a greater portion of such assessments, costs, and charges;

(ii) 50% of all assessments, costs, and charges shall be waived if the applicant's available income is between 150.1% and 175% of the poverty level, unless the applicant's assets that are not exempt under Part 9 or 10 of Article XII of this Code are such that the applicant is able, without undue hardship, to pay a greater portion of such assessments, costs, and charges; and

(iii) 25% of all assessments, costs and charges shall be waived if his or her available income is between 175.1% and 200% of the current poverty level as established by the United States Department of Health and Human Services, unless the applicant's assets that are not exempt under Part 9 or 10 of Article XII of this Code are such that the applicant is able, without undue hardship, to pay a greater portion of such assessments, costs, and charges.

(c) An Application for Waiver of Court Assessments shall be in writing and signed by the applicant, or, if the applicant is a minor or an incompetent adult, by another person having knowledge of the facts. The contents of the Application for Waiver of Court Assessments, and the procedure for decision of such Applications, shall be established by Supreme Court Rule 298. The court shall provide, through the office of the clerk of the court, the Application for Waiver of Court Assessments to any person seeking to sue or defend an action who indicates an inability to pay the assessments, costs, and charges of the action. The clerk of the court shall post in a conspicuous place in the courthouse a notice no smaller than 8.5 x 11 inches, using no smaller than 30-point typeface printed in English and in Spanish, advising the public that they may ask the court for permission to sue or defend a civil action without payment of assessments, costs, and charges. The notice shall be substantially as follows:

"If you are unable to pay the assessments, costs, and charges of an action you may ask the court to allow you to proceed without paying them. Ask the clerk of the court for forms."

(d) The clerk of the court shall not refuse to accept and file any complaint, appearance, or other paper presented by the applicant if accompanied by an Application for Waiver of Court Assessments, and those papers shall be considered filed on the date the application is presented. If the application is denied or a partial assessment waiver is granted, the order shall state a date certain by which the necessary assessments, costs, and charges must be paid. For good cause shown, the court may allow an applicant who receives a partial assessment waiver to defer payment of assessments, costs, and charges, make installment payments, or make payment upon reasonable terms and conditions stated in the order. The court may dismiss the claims or strike the defenses of any party failing to pay the assessments, costs, or charges within the time and in the manner ordered by the court. (e)A judicial ruling on an Application for Waiver of Court Assessments shall not be considered to constitute a decision of a substantial issue in the case under 735 ILCS 5/1001.

(f) The order granting a full or partial assessment waiver shall expire after one year. Upon expiration of the assessment waiver, or a reasonable period of time before expiration, the party whose assessments, costs, and charges were previously waived may file another Application for Waiver of Court Assessments and the court shall consider the Application in accordance with the applicable Supreme Court Rule.

(g) If, before or at the time of final disposition of the case, the court obtains information, including information from the court file, suggesting that a person whose assessments, costs, and charges were initially waived was not entitled to a full or partial assessment waiver at the time of application the court may require the person to appear at a court hearing by giving the applicant no less than 10 days' written notice of the hearing and the specific reasons why the initial assessment waiver might be reconsidered. The court may require the applicant to provide reasonably available evidence, including financial information, to support his or her eligibility for the assessment waiver, but shall not require submission of information that is unrelated to the criteria for eligibility and application requirements set forth in subsections (b)(1) or (b)(2), above. If the court finds that the person was not initially entitled to any assessment waiver, the person shall pay all assessments, costs and charges relating to the civil action including any previously waived assessments, costs, and charges. The order may state terms of payment in accordance with subsection (e). The court shall not conduct a hearing pursuant to this subsection more often than once every six months.

(h) If, before or at the time of final disposition of the case, the court obtains information, including information from the court file, suggesting that a person who received a full or partial assessment waiver has experienced a change in financial condition so that he or she is no longer eligible for that waiver, the court may require the person to appear at a court hearing by giving the applicant no less than 10 days' written notice of the hearing and the specific reasons why the assessment waiver might be reconsidered. The court may require the person to provide reasonably

available evidence, including financial information, to support his or her continued eligibility for the assessment waiver, but shall not require submission of information that is unrelated to the criteria for eligibility and application requirements set forth in subsections (b)(1) and (b)(2), above. If the court enters an order finding that the person is no longer entitled to an assessment waiver, or is henceforth entitled to a partial assessment waiver different than that which they had previously received, the person shall pay the requisite assessments, costs, and charges from the date of the order going forward. The order may state terms of payment in accordance with subsection (e). The court shall not conduct a hearing pursuant to this subsection more often than once every six months.

(i) A court, in its discretion, may appoint counsel to represent an indigent person, and that counsel shall perform his or her duties without fees, charges, or reward.

(j) Nothing in this Section shall be construed to affect the right of a party to sue or defend an action *in forma pauperis* without the payment of assessments, costs, or charges, or the right of a party to court-appointed counsel, as authorized by any other provision of law or by the rules of the Illinois Supreme Court. Nothing in this Section shall be construed to limit the authority of a court to order another party to action to pay the assessments, costs, or charges of the action.

(k) In any case where a party is represented by a civil legal services provider or an attorney in a court-sponsored pro bono program as defined in 735 ILCS 5/5-105.5, the attorney representing that party shall file a certification with the court in accordance with Supreme Court Rule 298 and that party shall be allowed to sue or defend without payment of assessments, costs, or charges without necessity of an Application.

(l) If an attorney files an appearance on behalf of a person whose assessments, costs, and charges were initially waived pursuant to 735 ILCS 5/5-105, the attorney must pay all assessments, costs, and charges relating to the civil action, including any previously waived assessments, costs, and charges, unless the attorney is either a civil legal services provider, representing their client pro bono as defined in 735 ILCS 5/5-105.5, or appearing pursuant to a Limited Scope Appearance in accordance with Supreme Court Rule 13(c)(6).

(m) The provisions of this Section are severable under Section 1.31 of the Statute on Statutes.

Proposed Amendments to Civil Assessment Waiver Statute, 735 ILCS 5/5-105

Redlined Version

Sec. 5-105. Leave to sue or defend as an indigent person.

(a) As used in this Section:

(1) "~~Fees~~Assessments, costs, and charges" means payments imposed on a party in connection with the prosecution or defense of a civil action, including, but not limited to: assessment set forth in 705 ILCS 105/27.1; fees for service of process and other papers served either within or outside this State, including service by publication pursuant to Section 2-206 of this Code and publication of necessary legal notices; motion fees; ~~jury demand fees;~~ charges for participation in, or attendance at, any mandatory process or procedure including, but not limited to, conciliation, mediation, arbitration, counseling, evaluation, "Children First", "Focus on Children" or similar programs; fees for supplementary proceedings; charges for translation services; guardian ad litem fees; and all other processes and procedures deemed by the court to be necessary to commence, prosecute, defend, or enforce relief in a civil action.

(2) "Indigent person" means any person who meets one or more of the following criteria:

(i) He or she is receiving assistance under one or more of the following means based governmental public benefits programs: Supplemental Security Income (SSI), Aid to the Aged, Blind and Disabled (AABD), Temporary Assistance for Needy Families (TANF), ~~Food Stamps,~~ Supplemental Nutrition Assistance Program (SNAP), General Assistance, Transitional Assistance, or State Children and Family Assistance.

(ii) His or her available income is 125% or less of the current poverty level, ~~as established by the United States Department of Health and Human Services,~~ unless the applicant's assets that are not exempt under Part 9 or 10 of Article XII of this Code are of a nature and value that the court determines that the applicant is able to pay the ~~fees~~assessments, costs, and charges.

(iii) He or she is, in the discretion of the court, unable to proceed in an action without payment of ~~fees~~assessments, costs, and charges and whose payment of those ~~fees~~assessments, costs, and charges would result in substantial hardship to the person or his or her family.

(iv) He or she is an indigent person pursuant to Section 5-105.5 of this Code.

°°°(3) "Poverty level" means the current poverty level as established by the United States Department of Health and Human Services. ¶

(b) On the application of any person, before, or after the commencement of an action, a: ¶

(1) If the court, ~~on finding~~ finds that the applicant is an indigent person, ~~shall grant~~ the applicant ~~leave~~ shall be granted a full assessment waiver entitling him or her to sue or defend the action without payment of any assessments, costs, or charges. ¶

(2) If the court finds that the applicant satisfies any of the criteria contained in subsections (i), (ii), or (iii), the applicant shall be granted a partial assessment waiver entitling him or her to sue or defend the action upon payment of the applicable percentage of the ~~fees~~ assessments, costs, and charges of the action ~~.~~ °
°°°, as follows: ¶

(i) °75% of all assessments, costs, and charges shall be waived if the applicant's available income is between 125% and 150% of the poverty level, unless the applicant's assets that are not exempt under Part 9 or 10 of Article XII of this Code are such that the applicant is able, without undue hardship, to pay a greater portion of such assessments, costs, and charges; ¶

(ii) °50% of all assessments, costs, and charges shall be waived if the applicant's available income is between 150.1% and 175% of the poverty level, unless the applicant's assets that are not exempt under Part 9 or 10 of Article XII of this Code are such that the applicant is able, without undue hardship, to pay a greater portion of such assessments, costs, and charges; and ¶

(iii) °25% of all assessments, costs and charges shall be waived if his or her available income is between 175.1% and 200% of the current poverty level as established by the United States Department of Health and Human Services, unless the applicant's assets that are not exempt under Part 9 or 10 of Article XII of this Code are such that the applicant is able, without undue hardship, to pay a greater portion of such assessments, costs, and charges. ¶

(c) °An ~~application for leave to sue or defend an action as an indigent person~~ Application for Waiver of Court Assessments shall be in writing and ~~supported~~ signed by the ~~affidavit of the~~ applicant, or, if the applicant is a minor or an incompetent adult, by ~~the affidavit of~~ another person having knowledge of the facts. The contents of the ~~affidavit~~ Application for Waiver of Court Assessments, and the procedure for decision of such Applications, shall be established by Supreme Court Rule °298. The court shall provide, through the office of the clerk of the court, ~~simplified forms consistent with the requirements of this Section and applicable Supreme Court Rules~~ the Application for Waiver of Court Assessments to any person seeking to sue or defend an action who indicates an inability to pay the ~~fees~~ assessments, costs, and charges of the action. ~~The application and supporting affidavit may be incorporated into one simplified form.~~ The clerk of the court shall post in a conspicuous place in the courthouse a notice no smaller than 8.5 x 11

inches, using no smaller than 30-point typeface printed in English and in Spanish, advising the public that they may ask the court for permission to sue or defend a civil action without payment of ~~fees~~assessments, costs, and charges. The notice shall be substantially as follows:¶

> "If you are unable to pay the ~~fees~~assessments, costs, and charges of an action you may ask the court to allow you to proceed without paying them. Ask the clerk of the court for forms."¶

~~(d) The court shall rule on applications under this Section in a timely manner based on information contained in the application unless the court, in its discretion, requires the applicant to personally appear to explain or clarify information contained in the application. If the court finds that the applicant is an indigent person, the court shall enter an order permitting the applicant to sue or defend without payment of fees, costs, or charges. If the application is denied, the court shall enter an order to that effect stating the specific reasons for the denial. The clerk of the court shall promptly mail or deliver a copy of the order to the applicant.~~¶

(d) The clerk of the court shall not refuse to accept and file any complaint, appearance, or other paper presented by the applicant if accompanied by an ~~application to sue or defend in forma pauperis~~Application for Waiver of Court Assessments, and those papers shall be considered filed on the date the application is presented. If the application is denied or a partial assessment waiver is granted, the order shall state a date certain by which the necessary ~~fees~~assessments, costs, and charges must be paid. ~~The court, for~~For good cause shown, the court may allow an applicant ~~whose application is denied~~who receives a partial assessment waiver to defer payment of ~~fees~~assessments, costs, and charges, make installment payments, or make payment upon reasonable terms and conditions stated in the order. The court may dismiss the claims or strike the defenses of any party failing to pay the ~~fees~~assessments, costs, or charges within the time and in the manner ordered by the court. ~~A determination concerning an application to sue or defend in forma pauperis shall not be construed as a ruling on the merits.~~↵

~~(f) The court may order an indigent person to pay all or a portion of the fees, costs, or charges waived pursuant to this Section out of moneys recovered by the indigent person pursuant to a judgment or settlement resulting from the civil action. However, nothing in this Section shall be construed to limit the authority of a court to order another party to the action to pay the fees, costs, or charges of the action.~~↵

(e) A judicial ruling on an Application for Waiver of Court Assessments shall not be considered to constitute a decision of a substantial issue in the case under 735 ILCS 5/1001.¶

(f) The order granting a full or partial assessment waiver shall expire after one year. Upon expiration of the assessment waiver, or a reasonable period of time before expiration, the party whose assessments, costs, and charges were previously waived may file another Application for Waiver of Court Assessments and the court shall consider the Application in accordance with the applicable Supreme Court Rule.¶

(g) If, before or at the time of final disposition of the case, the court obtains information, including information from the court file, suggesting that a person whose assessments, costs, and charges were initially waived was not entitled to a full or partial assessment waiver at the time of application the court may require the person to appear at a court hearing by giving the applicant no less than 10 days' written notice of the hearing and the specific reasons why the initial assessment waiver might be reconsidered. The court may require the applicant to provide reasonably available evidence, including financial information, to support his or her eligibility for the assessment waiver, but shall not require submission of information that is unrelated to the criteria for eligibility and application requirements set forth in subsections (b)(1) or (b)(2), above. If the court finds that the person was not initially entitled to any assessment waiver, the person shall pay all assessments, costs and charges relating to the civil action including any previously waived assessments, costs, and charges. The order may state terms of payment in accordance with subsection (e). The court shall not conduct a hearing pursuant to this subsection more often than once every six months. ¶

(h) If, before or at the time of final disposition of the case, the court obtains information, including information from the court file, suggesting that a person who received a full or partial assessment waiver has experienced a change in financial condition so that he or she is no longer eligible for that waiver, the court may require the person to appear at a court hearing by giving the applicant no less than 10 days' written notice of the hearing and the specific reasons why the assessment waiver might be reconsidered. The court may require the person to provide reasonably available evidence, including financial information, to support his or her continued eligibility for the assessment waiver, but shall not require submission of information that is unrelated to the criteria for eligibility and application requirements set forth in subsections (b)(1) and (b)(2), above. If the court enters an order finding that the person is no longer entitled to an assessment waiver, or is henceforth entitled to a partial assessment waiver different than that which they had previously received, the person shall pay the requisite assessments, costs, and charges from the date of the order going forward. The order may state terms of payment in accordance with subsection (e). The court shall not conduct a hearing pursuant to this subsection more often than once every six months. ¶

(i) A court, in its discretion, may appoint counsel to represent an indigent person, and that counsel shall perform his or her duties without fees, charges, or reward. ¶

(j) Nothing in this Section shall be construed to affect the right of a party to sue or defend an action *in forma pauperis* without the payment of ~~fees~~assessments, costs, or charges, or the right of a party to court-appointed counsel, as authorized by any other provision of law or by the rules of the Illinois Supreme Court.

~~(i) The provisions of this Section are severable under Section 1.31 of the Statute on Statutes.~~

~~(Source: P.A. 97-689, eff. 6-14-12; 97-813, eff. 7-13-12.)~~ Nothing in this Section shall be construed to limit the authority of a court to order another party to action to pay the assessments, costs, or charges of the action. ¶

Appendix C – Proposed Amended Civil Assessment Waiver Rule

Proposed Amendment to Illinois Supreme Court Rule 298

Clean Version

Rule 298. Application for Waiver of Court Assessments

(a) Contents. An Application for Waiver of Court Assessments in a civil action pursuant to 735 ILCS 5/5-105 shall be in writing and signed by the applicant or, if the applicant is a minor or an incompetent adult, by another person having knowledge of the facts.

(1) The contents of the Application must be sufficient to allow a court to determine whether an applicant qualifies for full or partial waiver of assessments pursuant to 735 ILCS 5/5-105, and shall include information regarding the applicant's household composition, receipt of need-based public benefits, income, expenses, and nonexempt assets.

(2) The court shall provide, and applicants shall be required to use, a standardized form titled "Application for Waiver of Court Assessments" adopted by the Illinois Supreme Court Access to Justice Commission.

(b) Ruling. The court shall either enter a ruling on the Application or set the Application for a hearing requiring the applicant to appear in person. The court may order the applicant to produce copies of specified documents in support of the Application at the hearing. The court's ruling on an Application for Waiver of Court Assessments shall be made according to standards set forth in 735 ILCS 5/5-105. If the Application is denied, the court shall enter an order to that effect specifying the reasons for the denial. If the court determines that the conditions for a full assessment waiver under 735 ILCS 5/5-105(b)(1) are satisfied, it shall enter an order permitting the applicant to sue or defend without payment of assessments, costs, or charges. If the court determines that the conditions for a partial assessment waiver under 735 ILCS 5/5-105(b)(2) are satisfied, it shall enter an order permitting the applicant to sue or defend after payment of a specified percentage of assessments, costs, or charges. If an Application for a partial assessment waiver is granted, and if necessary to avoid undue hardship on the applicant, the court may allow the applicant to defer payment of assessments, costs, and charges, make installment payments, or make payment upon reasonable terms and conditions stated in the order.

(c) Filing. No fee may be charged for filing an Application for Waiver of Court Assessments. The clerk must allow an applicant to file an Application for Waiver of Court Assessments in the court where his case will be heard.

(d) Cases involving representation by civil legal services provider or lawyer in court-sponsored pro bono program. In any case where a party is represented by a civil legal services provider or attorney in a court-sponsored pro bono program as defined in 735 ILCS 5/5-105.5, the attorney representing that party shall file a certification with the court in the form attached to this rule and that party shall be allowed to sue or defend without payment of assessments, costs, or charges as defined in 735 ILCS 5/5-105(a)(1) without necessity of an Application under this rule.

RULE 298 CERTIFICATION FOR WAIVER OF ASSESSMENTS REPRESENTATION BY CIVIL LEGAL SERVICES PROVIDER OR COURT-SPONSORED PRO BONO PROGRAM

Pursuant to Supreme Court Rule 298, the undersigned counsel hereby certifies that he/she is an attorney for _____ (*name of organization or court program*), a civil legal services provider or court-sponsored pro bono program as defined in 735 ILCS 5/5-105.5(a), and that _____(*name of organization or court program*) has made the determination that _____ (*name of party*) has income of 125% or less of the current official poverty guidelines or is otherwise eligible to receive services under the eligibility guidelines of the civil legal services provider or court-sponsored pro bono program. As a result, under Supreme Court Rule 298, _____ (*name of party*) is eligible to sue or defend without payment of assessments, costs, or charges as defined at 735 ILCS 5/5-105(a)(1).

_____

Attorney Certification

Name of Organization or Court Program_____

Attorney Name _____

Attorney No. _____

Address _____

City, State, Zip_____

Telephone _____

Email Address _____

Proposed Amendment to Illinois Supreme Court Rule 298

Redlined Version

Rule 298. Application for Waiver of Court ~~Fees~~ Assessments

(a) Contents. An Application for Waiver of Court ~~Fees~~ Assessments in a civil action pursuant to 735 ILCS 5/5-~~105shall~~105 shall be in writing and signed by the applicant or, if the applicant is a minor or an incompetent adult, by another person having knowledge of the facts.

(1) The contents of the Application must be sufficient to allow a court to determine whether an applicant qualifies for full or partial waiver of ~~fees~~ assessments pursuant to 735 ILCS 5/5-105, and shall include information regarding the applicant's household composition, receipt of need-based public benefits, income, expenses, and nonexempt assets.

(2) The court shall provide, and applicants shall be required to use, a standardized form ~~expressly~~ titled "Application for Waiver of Court ~~Fees~~ Assessments" adopted by the Illinois Supreme Court Access to Justice Commission.

(b) Ruling. The court shall either enter a ruling on the Application or ~~shall~~ set the Application for a hearing requiring the applicant to ~~personally~~ appear in ~~a timely manner.~~ person. The court may order the applicant to produce copies of ~~certain~~specified documents in support of the Application at the hearing. The court's ruling on an Application for Waiver of Court ~~Fees~~ Assessments shall be made according to standards set forth in 735 ILCS 5/5-105. If the Application is denied, the court shall enter an order to that effect ~~stating~~specifying the ~~specific reason~~reasons for the denial. If the ~~Application is granted, court~~ determines that the ~~court~~conditions for a full assessment waiver under 735 ILCS 5/5-105(b)(1) are satisfied, it shall enter an order permitting the applicant to sue or defend without payment of ~~fees~~assessments, costs, or charges. If the court determines that the conditions for a partial assessment waiver under 735 ILCS 5/5-105(b)(2) are satisfied, it shall enter an order permitting the applicant to sue or defend after payment of a specified percentage of assessments, costs, or charges. If an Application for a partial assessment waiver is granted, and if necessary to avoid undue hardship on the applicant, the court may allow the applicant to defer payment of assessments, costs, and charges, make installment payments, or make payment upon reasonable terms and conditions stated in the order.

(c) Filing. No fee may be charged for filing an Application for Waiver of Court ~~Fees~~Assessments. The clerk must allow an applicant to file an Application for Waiver of Court ~~Fees~~ Assessments in the court where his case will be heard.

(d) Cases involving representation by civil legal services provider or lawyer in court-sponsored pro bono program. In any case where a party is represented by a civil legal services provider or attorney in a court-sponsored pro bono program as defined in 735 ILCS 5/5-105.5,

the attorney representing that party shall file a certification with the court in the form attached to this rule and that party shall be allowed to sue or defend without payment of ~~fees~~assessments, costs, or charges as defined in 735 ILCS 5/5-105(a)(1) without necessity of an Application under this rule.

RULE 298 CERTIFICATION FOR WAIVER OF ~~FEES~~ ASSESSMENTS REPRESENTATION BY CIVIL LEGAL SERVICES PROVIDER OR COURT-SPONSORED PRO BONO PROGRAM

Pursuant to Supreme Court Rule 298, the undersigned counsel hereby certifies that he/she is an attorney for _____ (*name of organization or court program*), a civil legal services provider or court-sponsored pro bono program as defined in 735 ILCS 5/5-105.5(a), and that _____ (*name of organization or court program*) has made the determination that _____ (*name of party*) has income of 125% or less of the current official poverty guidelines or is otherwise eligible to receive services under the eligibility guidelines of the civil legal services provider or court-sponsored pro bono program. As a result, under Supreme Court Rule 298, _____ (*name of party*) is eligible to sue or defend without payment of ~~fees~~assessments, costs, or charges as defined at 735 ILCS 5/5-105(a)(1).

_____

Attorney Certification

Name of Organization or Court Program _____

Attorney Name _____

Attorney No. _____

Address _____

City, State, Zip _____

Telephone _____

Email Address _____

Page Break

Appendix D – Proposed Criminal/Traffic Assessment Act

Proposed Criminal/Traffic Assessment Act

Sec. 1. Short title.

This article may be cited as the Criminal/Traffic Assessment Act.

Sec. 2 Definitions.

For the purposes of this act:

“Assessment” means any costs imposed on a criminal or quasi-criminal defendant pursuant to the Criminal/Traffic Assessment Act.

“Business Offense” means a petty offense for which the fine is in excess of $1,000.

“Charge” means the violation of a state statute or local ordinance.

“Conservation Offense” includes offenses defined in Supreme Court Rule 501(c).

“Conviction” means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

“Criminal Offense” means a petty offense, business offense, misdemeanor, felony, or municipal ordinance violation. As used in this Act, a minor traffic offense shall not be considered a criminal offense.

“Defendant” means a person or business charged with an offense.

“Domestic Violence Offense” means a violation of domestic battery (720 ILCS 5/12-3.2), aggravated domestic battery (720 ILCS 5/12-3.3), violation of an order of protection (720 ILCS 5/12-3.4), interfering with the reporting of domestic violence (720 ILCS 5/12-3.5), and disclosing location of domestic violence victim (720 ILCS 5/12-3.6).

“Drug Offense” means any violation of Chapter 720 Acts 550 (Cannabis Control Act), 570 (Illinois Controlled Substances Act) or 646 (Methamphetamine Control and Community Protection Act) of the Illinois Compiled Statutes or any similar local ordinance which involves to possession or delivery of the drug.

“Felony” means an offense for which a sentence to death or to a term of imprisonment in a penitentiary for one year or more is provided.

The “Illinois Vehicle Code” means Chapter 625, Act 5.

“Major traffic offense” means a Class A, B, or C, traffic offense or a similar provision of a municipal or local ordinance.

“Minor traffic offense” means a petty or business traffic offense or a similar provision of a municipal or local ordinance.

“Misdemeanor” means any offense for which a sentence to a term of imprisonment in other than a penitentiary for less than one year may be imposed.

“Petty Offense” means any offense for which a sentence of imprisonment is not an authorized disposition.

“Service Provider costs” means costs incurred as a result of services provided by a non-judicial entity including, but not limited to, traffic schools, laboratories, ambulance services, fire departments, etc.

“Sex Offense” means a violation of Article 11 (Sex Offenses) of Chapter 720 if the Criminal Code of 2012.

"Supervision" means a disposition of conditional and revocable release without probationary supervision, but under such conditions and reporting requirements as are imposed by the court, at the successful conclusion of which disposition the defendant is discharged and a judgment dismissing the charges is entered.

"Traffic Offense" means any charge of a violation described in Supreme Court Rule 501(f)

Sec. 3 Assessments

Sec. 3-1. Minimum fine.

Unless specified in the offense or the schedule, the minimum fine required in any violation will be $25. If the court finds that the fine would impose an undue burden on the victim, the court may reduce or waive this fine.

Sec. 3-2. Schedules.

When any defendant is convicted of, pleads guilty to, or is placed on court supervision for a violation of the Illinois Compiled Statutes or any local ordinance, the court will order a schedule of assessments as set forth below for the defendant to pay in addition to any fine ordered by the court.

Sec. 3-4. Service Provider Costs

Service Provider Costs include amounts in the Conditional Amounts sections that are reimbursements for services provided. They are payable to the entity that provided the service. These amounts are not eligible for credit for time served, substitution of community service, or waiver.

Sec. 3-5. Credit Fine for Time Served

Any credit of fine for time served prior to sentencing will be deducted first from the fine, if any, ordered by the court. Any remainder of credit will be equally divided between the amounts paid to the treasurers indicated in the schedule.

Sec. 4. Assessment Schedules.

> In all schedules except 1 through 4, the schedule amount will include $15 which will be remitted to either the County Treasurer or local treasurer determined by the entity prosecuting the case. This amount is reflected in the Conditional Amounts because of the disbursement requirements but will be added into the total since it is collected in every instance except the Supreme Court Rule 529 Schedule #12.

Schedule 1 (Generic felony offenses)

$444 + Conditional Amounts + Fine, if ordered

Clerk Portion - $45

$20 for deposit into the Court Automation Fund

$20 for deposit into the Court Document Storage Fund

$ 5 for deposit into the Circuit Court Clerk Operation and Administrative Fund

County Portion - $259

$225 for deposit into the County General Fund

$ 10 for deposit into the Child Advocacy Center Fund

$ 2 for deposit into the State's Attorney Records Automation Fund

$ 2 for deposit into the Public Defender Records Automation Fund

$ 10 for deposit into the County Jail Medical Costs Fund

$ 10 deposit into the Probation and Court Services Fund

State Portion - $140

$ 40 for deposit into State Police funds

$100 for deposit into the Violent Crime Victims Assistance Fund

Conditional Amounts

$250 to lab that performs DNA analysis, if ordered

$ 15 to lab that performs drug or alcohol testing (per test ordered)

$ 25 per day ordered by court for trial attended by State's Attorney to County General Fund

$ 10 for violations of domestic battery or aggravated domestic battery to State Treasurer for deposit into the Domestic Violence Shelter and Service Fund

$ 25 to State Treasurer for violation of order of protection when victim is family or household member for Domestic Violence Abuser Services Fund.

$ 25 for defendants on parole or mandatory supervised release to State Treasurer for deposit into Illinois Department of Corrections Parole Division Offender Supervision Fund.

$500 for sexually motivated offenses to the State Treasurer for deposit into State Police funds.

Schedule 2 (Felony DUI offenses)

$1,554 + Conditional Amounts + Fine, if ordered

Clerk Portion - $45

$20 for deposit into the Court Automation Fund

$20 for deposit into the Court Document Storage Fund

$ 5 for deposit into the Circuit Court Clerk Operation and Administrative Fund

County Portion - $259

$225 for deposit into the County General Fund

$ 10 for deposit into the Child Advocacy Center Fund

$ 2 for deposit into the State's Attorney Records Automation Fund

$ 2 for deposit into the Public Defender Records Automation Fund

$ 10 for deposit into the County Jail Medical Costs Fund

$ 10 deposit into the Probation and Court Services Fund

State Portion - $1,050

$840 for deposit into State Police funds

$100 for deposit into Violent Crime Victims Assistance Fund

$ 5 for Driver's Education Fund

$100 for Trauma Center Fund (split evenly between Dept of Public Health & HFS)

$ 5 for Spinal Cord Injury Paralysis Cure Research Trust Fund

Local Portion – $200

$200 for deposit into the DUI Fund

Conditional Amounts

$ 250 to lab that performs DNA analysis, if ordered

$ 15 to lab that performs drug or alcohol testing (per test ordered)

$ 25 per day ordered by court for trial attended by State's Attorney to County General Fund

$1,000 maximum for reimbursement for emergency response (if response was needed)

$ 150 to lab that performs DUI analysis (if laboratory was used)

$ 25 for defendants on parole or mandatory supervised release to State Treasurer for deposit into Illinois Department of Corrections Parole Division Offender Supervision Fund.

Fee charged by Traffic School, if ordered.

Schedule 3 (Felony Drug Offenses)

$2,114 + Conditional Amounts + Fine, if ordered

Clerk Portion - $45

$20 for deposit into the Court Automation Fund

$20 for deposit into the Court Document Storage Fund

$ 5 for deposit into the Circuit Court Clerk Operation and Administrative Fund

County Portion - $259

$225 for deposit into the County General Fund

$ 10 for deposit into the Child Advocacy Center Fund

$ 2 for deposit into the State's Attorney Records Automation Fund

$ 2 for deposit into the Public Defender Records Automation Fund

$ 10 for deposit into the County Jail Medical Costs Fund

$ 10 deposit into the Probation and Court Services Fund

State Portion - $1,810

$ 40 for deposit into State Police funds

$ 100 for deposit into Violent Crime Victims Assistance Fund

$ 100 for Trauma Center Fund (split evenly between Dept of Public Health & HFS)

$ 5 for Spinal Cord Injury Paralysis Cure Research Trust Fund

$1,500 for deposit into Drug Treatment Fund

$ 38 for deposit into Prescription Pill and Drug Disposal Fund

$ 27 for Criminal Justice Information Projects Fund

Conditional Amounts

$ 250 to lab that performs DNA analysis, if ordered

$ 15 to lab that performs drug or alcohol testing (per test ordered)

$ 25 per day ordered by court for trial attended by State's Attorney to County General Fund

$1,000 maximum for reimbursement for emergency response (if response was needed)

$ 150 to lab that performs drug analysis (if laboratory was used)

$ 25 for defendants on parole or mandatory supervised release to State Treasurer for deposit into Illinois Department of Corrections Parole Division Offender Supervision Fund.

Schedule 4 (Felony Sex Offenses)

$1,144 + Conditional Amounts + Fine, if ordered

Clerk Portion - $45

$20 for deposit into the Court Automation Fund

$20 for deposit into the Court Document Storage Fund

$ 5 for deposit into the Circuit Court Clerk Operation and Administrative Fund

County Portion - $259

$225 for deposit into the County General Fund

$ 10 for deposit into the Child Advocacy Center Fund

$ 2 for deposit into the State's Attorney Records Automation Fund

$ 2 for deposit into the Public Defender Records Automation Fund

$ 10 for deposit into the County Jail Medical Costs Fund

$ 10 deposit into the Probation and Court Services Fund

State Portion - $840

$540 for deposit into State Police funds

$100 for deposit into Violent Crime Victims Assistance Fund

$200 for deposit into Sexual Assault Services Fund, if victim is family or household member, 50% of funds are deposited into Domestic Violence Shelter and Service Fund

Conditional Amounts

$250 to lab that performs DNA analysis, if ordered

$ 15 to lab that performs drug or alcohol testing (per test ordered)

$ 25 per day ordered by court for trial attended by State's Attorney to County General Fund

$ 25 for defendants on parole or mandatory supervised release to State Treasurer for deposit into Illinois Department of Corrections Parole Division Offender Supervision Fund.

$ 25 for violation of order of protection when victim is family or household member to the State Treasurer for deposit into the Domestic Violence Shelter and Service Fund

Schedule 5 (Generic misdemeanor offenses)

$355 + Conditional Amounts + Fine, if ordered

Clerk Portion - $48

$20 for deposit into the Court Automation Fund

$20 for deposit into the Court Document Storage Fund

$ 5 for deposit into the Circuit Court Clerk Operation and Administrative Fund

$ 3 for deposit into the Circuit Court Clerk Electronic Citation Fund

County Portion - $175

$145 for deposit into the County General Fund *

$ 10 for deposit into the Child Advocacy Center Fund

$ 10 for deposit into the County Jail Medical Costs Fund

$ 10 for deposit into the Probation and Court Services Fund

State Portion - $115

$40 for deposit into the State Police

$75 for deposit into the Violent Crime Victims Assistance Fund

Local Portion - $2

$ 2 for E-Citation Fund

Conditional Amounts

$15 for prosecution fees to County Treasurer for County General Fund or to Local Treasurer depending on who did prosecution

$ 2 for deposit into the State's Attorney Records Automation Fund if prosecuted by State's Attorney

$ 2 for deposit into the Public Defender Records Automation Fund if prosecuted by State's Attorney

$ 15 to lab that performs drug or alcohol testing (per test ordered)

$ 25 per day ordered by court for trial attended by State's Attorney to County General Fund

$ 25 for defendants on parole or mandatory supervised release to State Treasurer for deposit into Illinois Department of Corrections Parole Division Offender Supervision Fund.

$ 10 for violations of domestic battery or aggravated domestic battery to State Treasurer for deposit into the Domestic Violence Shelter and Service Fund

$200 minimum on violations of orders of protection offenses to County Treasurer for deposit into the Probation and Court Services Fund

$ 25 for violations of order of protection when victim is family or household member to State Treasurer for deposit into Domestic Violence Abuser Services Fund.

$ 500 for sexually motivated offenses to the State Treasurer for deposit into State Police funds.

Schedule 6 (Misdemeanor DUI Offenses)

$1,215 + Conditional Amounts + Fine, if ordered

Clerk Portion - $48

$20 for deposit into the Court Automation Fund

$20 for deposit into the Court Document Storage Fund

$ 5 for deposit into the Circuit Court Clerk Operation and Administrative Fund

$ 3 for deposit into the Circuit Court Clerk Electronic Citation Fund

County Portion - $175

$145 for deposit into the County General Fund

$ 10 for deposit into the Child Advocacy Center Fund

$ 10 for deposit into the County Jail Medical Costs Fund

$ 10 for deposit into the Probation and Court Services Fund

State Portion - $625

$440 for deposit into State Police funds

$ 75 for deposit into the Violent Crime Victims Assistance Fund

$ 5 for deposit into the Driver's Education Fund

$100 for Trauma Center Fund (split evenly between Dept of Public Health & HFS)

$ 5 for Spinal Cord Injury Paralysis Cure Research Trust Fund

Local Portion - $352

$ 2 for E-Citation Fund

$350 for DUI Fund

Conditional Amounts

$ 15 for prosecution fees to County Treasurer for County General Fund or to Local Treasurer depending on who did prosecution

$ 2 for deposit into the State's Attorney Records Automation Fund if prosecuted by State's Attorney

$ 2 for deposit into the Public Defender Records Automation Fund if prosecuted by State's Attorney

$ 15 to lab that performs drug or alcohol testing (per test ordered)

$ 25 per day ordered by court for trial attended by State's Attorney to County General Fund

$ 25 for defendants on parole or mandatory supervised release to State Treasurer for deposit into Illinois Department of Corrections Parole Division Offender Supervision Fund.

$1,000 maximum for reimbursement for emergency response (if response was needed)

$ 150 to lab that performs DUI analysis (if laboratory was used)

Fee charged by Traffic School, if ordered.

Schedule 7 (Misdemeanor drug offenses)

$825 + Conditional Amounts + Fine, if ordered

Clerk Portion - $48

$20 for deposit into the Court Automation Fund

$20 for deposit into the Court Document Storage Fund

$ 5 for deposit into the Circuit Court Clerk Operation and Administrative Fund

$ 3 for deposit into the Circuit Court Clerk Electronic Citation Fund

County Portion - $175

$145 for deposit into the County General Fund

$ 10 for deposit into the Child Advocacy Center Fund

$ 10 for deposit into the County Jail Medical Costs Fund

$ 10 for deposit into the Probation and Court Services Fund

State Portion - $585

$ 40 for deposit into State Police funds

$ 75 for deposit into the Violent Crime Victims Assistance Fund

$100 for Trauma Center Fund (split evenly between Dept of Public Health & HFS)

$ 5 for Spinal Cord Injury Paralysis Cure Research Trust Fund

$300 for deposit into Drug Treatment Fund

$ 38 for deposit into Prescription Pill land Drug Disposal Fund

$ 27 for Criminal Justice Information Projects Fund

Local Portion - $2

$2 for deposit into E-Citation Fund

Conditional Amounts

$ 15 for prosecution fees to County Treasurer for County General Fund or to Local Treasurer depending on who did prosecution

$ 2 for deposit into the State's Attorney Records Automation Fund if prosecuted by State's Attorney

$ 2 for deposit into the Public Defender Records Automation Fund if prosecuted by State's Attorney

$ 15 to lab that performs drug or alcohol testing (per test ordered)

$ 25 per day ordered by court for trial attended by State's Attorney to County General Fund

$ 25 for defendants on parole or mandatory supervised release to State Treasurer for deposit into Illinois Department of Corrections Parole Division Offender Supervision Fund.

$1,000 maximum for reimbursement for emergency response (if response was needed)

$ 100 to lab that performs drug analysis (if laboratory was used)

Schedule 8 (Misdemeanor sex offenses)

$555 + Conditional Amounts + Fine, if ordered

Clerk Portion - $48

$20 for deposit into the Court Automation Fund

$20 for deposit into the Court Document Storage Fund

$ 5 for deposit into the Circuit Court Clerk Operation and Administrative Fund

$ 3 for deposit into the Circuit Court Clerk Electronic Citation Fund

County Portion - $175

$145 for deposit into the County General Fund

$ 10 for deposit into the Child Advocacy Center Fund

$ 10 for deposit into the County Jail Medical Costs Fund

$ 10 for deposit into the Probation and Court Services Fund

State Portion - $815

$540 for deposit into State Police funds

$ 75 for deposit into the Violent Crime Victims Assistance Fund

$200 for deposit into Sexual Assault Services Fund, if victim is family or household member, 50% of funds are deposited into Domestic Violence Shelter and Service Fund

Local Portion - $2

$ 2 for E-Citation Fund

Conditional Amounts

$15 for prosecution fees to County Treasurer for County General Fund or to Local Treasurer depending on who did prosecution

$ 2 for deposit into the State's Attorney Records Automation Fund if prosecuted by State's Attorney

$ 2 for deposit into the Public Defender Records Automation Fund if prosecuted by State's Attorney

$15 to lab that performs drug or alcohol testing (per test ordered)

$25 per day ordered by court for trial attended by State's Attorney to County General Fund

$25 for defendants on parole or mandatory supervised release to State Treasurer for deposit into Illinois Department of Corrections Parole Division Offender Supervision Fund.

$25 for violation of order of protection when victim is family or household member to the State Treasurer for deposit into the Domestic Violence Shelter and Service Fund

Schedule 9 (Major traffic offenses (Non-DUI classes A, B and C))

$360 + Conditional Amounts + Fine, if ordered

Clerk Portion - $48

$20 for deposit into the Court Automation Fund

$20 for deposit into the Court Document Storage Fund

$ 5 for deposit into the Circuit Court Clerk Operation and Administrative Fund

$ 3 for deposit into the Circuit Court Clerk Electronic Citation Fund

County Portion - $175

$145 for deposit into the County General Fund

$ 10 for deposit into the Child Advocacy Center Fund

$ 10 for deposit into the County Jail Medical Costs Fund

$ 10 for deposit into the Probation and Court Services Fund

State Portion - $120

$40 for deposit into State Police funds

$75 for deposit into the Violent Crime Victims Assistance Fund

$ 5 for deposit into the Driver's Education Fund

Local Portion - $2

$ 2 for E-Citation Fund

Conditional Amounts

$15 for prosecution fees to County Treasurer for County General Fund or to Local Treasurer depending on who did prosecution

$ 2 for deposit into the State's Attorney Records Automation Fund if prosecuted by State's Attorney

$ 2 for deposit into the Public Defender Records Automation Fund if prosecuted by State's Attorney

$15 to lab that performs drug or alcohol testing (per test ordered)

$25 per day ordered by court for trial attended by State's Attorney to County General Fund

$25 for defendants on parole or mandatory supervised release to State Treasurer for deposit into Illinois Department of Corrections Parole Division Offender Supervision Fund.

$100 or $500 maximum for reimbursement for emergency response (if response was needed)

Fee charged by Traffic School, if ordered.

Schedule 10 (Minor traffic offenses (Classes P and U))

$140 + Conditional Amounts + Fine, if ordered

Clerk Portion - $48

$20 for deposit into the Court Automation Fund

$20 for deposit into the Court Document Storage Fund

$ 5 for deposit into the Circuit Court Clerk Operation and Administrative Fund

$ 3 for deposit into the Circuit Court Clerk Electronic Citation Fund

County Portion - $55

$55 for deposit into the County General Fund

State Portion - $20

$15 for deposit into State Police funds

$ 5 for deposit into the Driver's Education Fund

Local Portion - $2

$2 for E-Citation Fund

Conditional Amounts

$15 for prosecution fees to County Treasurer for County General Fund or to Local Treasurer depending on who did prosecution

$ 2 for deposit into the State's Attorney Records Automation Fund if prosecuted by State's Attorney

$ 2 for deposit into the Public Defender Records Automation Fund if prosecuted by State's Attorney

$15 to lab that performs drug or alcohol testing (per test ordered)

$25 per day ordered by court for trial attended by State's Attorney to County General Fund

$125 or $250 for violations of speeding in a construction zone to State Treasurer or County Treasurer for deposit into Transportation Safety Highway Hire-back Fund, depending on who write the ticket.

$50 for speeding or failure to stop in specified park zones to be remitted to park district

$50 for not yielding to pedestrian in crosswalk in school zone to the remitted to school district

$50 for speeding in specified school zone to the remitted to school district

Fee charged by Traffic School, if ordered.

Schedule 11 (Conservation offenses (Classes P and U))

$150 + Conditional Amounts + Fine, if ordered

Clerk Portion - $48

Court Automation $20 for Court Automation Fund

Document storage $20 for Court Document Storage Fund

Clerk Administration $5 for Circuit Court Clerk Operation and Administrative Fund

E-Citation $3 for Circuit Court Clerk Electronic Citation Fund

County Portion - $55

$55 for deposit into the County General Fund

State Portion - $30

$15 for deposit into State Police funds

$15 for deposit into the Conservation Police Operations Assistance Fund

Local Portion - $2

$2 for E-Citation Fund

Conditional Amounts

$15 for prosecution fees to County Treasurer for County General Fund or to Local Treasurer depending on who did prosecution

$ 2 for deposit into the State's Attorney Records Automation Fund if prosecuted by State's Attorney

$ 2 for deposit into the Public Defender Records Automation Fund if prosecuted by State's Attorney

Schedule 12 (Supreme Court Rule 529)

$150

Clerk Portion - $48

Court Automation $20 for Court Automation Fund

Document storage $20 for Court Document Storage Fund

Clerk Administration $5 for Circuit Court Clerk Operation and Administrative Fund

E-Citation $3 for Circuit Court Clerk Electronic Citation Fund

County Portion - $30

$30 for deposit into the County General Fund

State Portion - $20

$15 for deposit into State Police funds

$ 5 for deposit into the Driver's Education Fund

Local Portion - $52

$ 2 for E-Citation Fund

$50 mandatory fine

Conditional Amounts

Fee charged by Traffic School, if ordered.

Sec. 5. Funds

(a) All money collected by the clerk of the court based on the schedules shall be remitted as defined in Section 4 above to the County Treasurer, the State Treasurer and to the treasurers of the local governments. The treasurers are responsible for depositing the money into the funds as indicated in the schedules.

(b) The following funds are to be set up, if not already present, by the indicated Treasurers. If a county has not instituted, nor plans to institute a program that uses a particular fund, the County Treasurer need not create the fund and instead deposit the money intended for the fund into the County General Fund for use in financing the court system.

(1) State Treasurer

(a) Conservation Police Operations Assistance Fund (30 ILCS 105/6z-87)

(b) Criminal Justice Information Projects Fund (20 ILCS 3930/9.1)

(c) Domestic Violence Abuser Services Fund (730 ILCS 5/5-9-1.11)

(d) Domestic Violence Shelter and Service Fund (20 ILCS 1310)

(e) Driver's Education Fund (105 ILCS 5/27-24.4)

(f) Drug Treatment Fund

(g) Illinois Department of Corrections Parole Division Offender Supervision Fund

(h) Prescription Pill and Drug Disposal Fund

(i) Sexual Assault Services Fund

(j) Spinal Cord Injury Paralysis Cure Research Trust Fund

(k) State Crime Laboratory Fund (drug crime lab fees)

(l) State Police DUI Fund (DUI crime lab fees)

(m) Transportation Safety Highway Hire-back Fund

(n) Trauma Center Fund

(o) Violent Crime Victims Assistance Fund

(2) County Treasurer

(a) Child Advocacy Center Fund

(b) Circuit Court Clerk Electronic Citation Fund

(c) Circuit Court Clerk Operation and Administrative Fund

(d) Court Automation Fund

(e) Court Document Storage Fund

(f) County General Fund

(g) County Jail Medical Costs Fund

(h) Probation and Court Services Fund

(i) Public Defender Records Automation Fund

(j) State's Attorney Records Automation Fund

(k) Transportation Safety Highway Hire-back Fund

(3) Treasurers of Local Governments

(a) DUI Fund

(b) E-Citation Fund

Appendix E – Proposed Criminal Assessment Waiver Statute

Proposed Criminal Assessment Waiver Statute, 720 ILCS 5/3-9

Sec. 3-9. Leave to defend as an indigent person.

(a) As used in this Section:

(1) "Assessments" means any costs imposed on a criminal defendant pursuant to Schedules 1-9 of the Criminal/ Traffic Assessment Act.

(2) "Indigent person" means any person who meets one or more of the following criteria:

(i) He or she is receiving assistance under one or more of the following means based governmental public benefits programs: Supplemental Security Income (SSI); Aid to the Aged, Blind and Disabled (AABD); Temporary Assistance for Needy Families (TANF); Supplemental Nutrition Assistance Program (SNAP); General Assistance; Transitional Assistance; or State Children and Family Assistance.

(ii) His or her available income is 125% or less of the current poverty level as established by the United States Department of Health and Human Services, unless the applicant's assets that are not exempt under Part 9 or 10 of Article XII of this Code are of a nature and value that the court determines that the applicant is able to pay the assessments.

(iii) He or she is, in the discretion of the court, unable to proceed in an action without payment of assessments and whose payment of those assessments would result in substantial hardship to the person or his or her family.

(3) "Poverty level" means the current poverty level as established by the United States Department of Health and Human Services

(b) On the application of any defendant, after the commencement of an action, but no later than 30 days after sentencing:

(1) If the court finds that the applicant is an indigent person, the applicant shall be granted a full assessment waiver entitling him or her to sue or defend the action without payment of any assessments.

(2) If the court finds that the applicant satisfies any of the criteria contained in subsections (i) through (iii), the applicant shall be granted a partial assessment waiver entitling it to sue or defend the action upon payment of the following percentages of the assessments of the action:

(i) 75% of all assessments shall be waived if the applicant's available income is 150% of the poverty level, unless the applicant's assets that are not exempt under Part 9 or 10 of Article XII of this Code are such that the applicant is able, without undue hardship, to pay the total assessments.

(ii) 50% of all assessments shall be waived if the applicant's available income is 175% of the poverty level, unless the applicant's assets that are not exempt under Part 9 or 10 of Article XII of this Code are such that the court determines that the applicant is able, without undue hardship, to pay a greater portion of the assessments.

(iii) 25% of all assessments shall be waived if the applicant's available income is 200% of the poverty level, unless the applicant's assets that are not exempt under Part 9 or 10 of Article XII of this Code are such that the court determines that the applicant is able, without undue hardship, to pay a greater portion of the assessments.

(c) An Application for Waiver of Assessments shall be in writing, signed by the defendant or, if the defendant is a minor or an incompetent adult, by another person having knowledge of the facts, and filed no later than 30 days after sentencing. The contents of the Application for Waiver of Court Assessments, and the procedure for decision of such Applications, shall be established by Supreme Court Rule. The court shall provide, through the office of the

clerk of the court, the Application for Waiver of Assessments to any person seeking to defend an action who indicates an inability to pay the assessments. The clerk of the court shall post in a conspicuous place in the courthouse a notice no smaller than 8.5 x 11 inches, using no smaller than 30-point typeface printed in English and in Spanish, advising the public that they may ask the court for permission to defend a criminal action without payment of the assessments. The notice shall be substantially as follows:

"If you are unable to pay the required assessments you may ask the court to allow you to proceed without paying them. Ask the clerk of the court for forms."

(d) For good cause shown, the court may allow an applicant whose application is denied or who receives a partial assessment waiver to defer payment of the assessments, make installment payments, or make payment upon reasonable terms and conditions stated in the order.

(e) Nothing in this Section shall be construed to affect the right of a party to defend an action *in forma pauperis* without the payment of assessments, or the right of a party to court-appointed counsel, as authorized by any other provision of law or by the rules of the Illinois Supreme Court.

(f) In any case where a party is represented by a criminal legal services provider or attorney in a court-sponsored pro bono program as defined in 735 ILCS 5/5-105.5, the attorney representing that party shall file a certification with the court as established by Supreme Court Rule 404 and that party shall be allowed to defend without payment of assessments without necessity of an Application.

(g) The provisions of this Section are severable under Section 1.31 of the Statute on Statutes.

Appendix F – Proposed Criminal Assessment Waiver Rule

Supreme Court Rule 404

Rule 404. Application for Waiver of Court Assessments

(a) Contents. An Application for Waiver of Court Assessments in a criminal action pursuant to 720 ILCS 5/3-9 shall be in writing and signed by the applicant or, if the applicant is a minor or an incompetent adult, by another person having knowledge of the facts. The application should be submitted no later than 30 days after the entry of judgment.

(1) The contents of the Application must be sufficient to allow a court to determine whether an applicant qualifies for a full or partial waiver of Assessments pursuant to 720 ILCS 5/3-9, and shall include information regarding the applicant's household composition, receipt of need-based public benefits, income, expenses, and nonexempt assets.

(2) The court shall provide and applicants shall be required to use a standardized form expressly titled "Application for Waiver of Assessments" adopted by the Illinois Supreme Court Access to Justice Commission.

(b) Ruling. The court shall either enter a ruling on the Application or shall set the Application for a hearing requiring the applicant to appear in person. The court may order the applicant to produce copies of certain documents in support of the Application at the hearing. The court's ruling on an Application for Waiver of Assessments shall be made according to standards set forth in 720 ILCS 5/3-9. If the Application is denied, the court shall enter an order to that effect specifying the reasons for the denial. If the court determines that the conditions for a full assessment waiver are satisfied, it shall enter an order permitting the applicant to defend without payment of the assessments. If the court determines that the conditions for a partial assessment waiver under 720 ILCS 5/3-9(a)(3) are satisfied, it shall enter an order permitting the applicant to sue or defend after payment of a specified percentage of the assessments. If an Application is denied or an Application for a partial assessment waiver is granted, the court may allow the applicant to defer payment of the assessments, making installment payments, or make payment upon reasonable terms and conditions stated in the order.

(c) Filing. No assessment may be charged for filing an Application for Waiver of Assessments. The clerk must allow an applicant to file an Application for Waiver of Assessments in the court where his case will be heard.

(d) Cases involving representation by criminal legal services providers or lawyers in court-sponsored pro bono program. In any case where a party is represented by a criminal legal services provider or an attorney in a court-sponsored pro bono program as defined in 735 ILCS 5/5-105.5, the attorney representing that party shall file a certification with the court in the form attached to this rule and that party shall be allowed to defend without payment of assessments as defined in 720 ILCS 5/3-9(a)(1) without necessity of an Application under this rule.

RULE 404 CERTIFICATION FOR WAIVER OF ASSESSMENTS REPRESENTATION BY CRIMINAL LEGAL SERVICES PROVIDER OR COURT-SPONSORED PRO BONO PROGRAM

Pursuant to Supreme Court Rule 404, the undersigned counsel hereby certifies that he/she is an attorney for _____ (*name of organization or court program*), a criminal legal services provider or court-sponsored pro bono program as defined in 735 ILCS 5/5-105.5(a), and that _____(*name of organization or court program*) has made the determination that _____ (*name of party*) has income of 125% or less of the current official poverty guidelines or is otherwise eligible to receive services under the eligibility guidelines of the criminal legal services provider or court-sponsored pro bono program. As a result, under Supreme Court Rule 404, _____ (*name of party*) is eligible to sue or defend without payment of assessments as defined at 720 ILCS 5/3-9(a)(1)

_____

Attorney Certification

Name of Organization or Court Program: _____

Attorney Name _____

Attorney No. _____

Address _____

City, State, Zip_____

Telephone _____

Email Address _____

Appendix G – Proposed Amendments to Illinois Supreme Court Rule 529

Clean Version

Rule 529. Fines, Penalties and Costs on Written Pleas of Guilty in Minor Traffic and Conservation Offenses

(a) Traffic Offenses.

(1) All traffic offenses, except those requiring a court appearance under Rule 551 and those involving offenses set out in Rule 526(b)(1), may be satisfied without a court appearance by a written plea of guilty, with the exception of electronic pleas unless authorized by the Supreme Court, and payment of the amount stated in Schedule 12 of the Criminal/Traffic Assessment Act. If an order of failure to appear to answer the charge has been entered pursuant to Rule 556(a), an additional assessment of $35 shall be added. The clerk of the circuit court shall disburse the amount collected pursuant to statute.

(2) A charge of violating section 3-401(d), 15-111 or offenses punishable by fine pursuant to sections 15-113.1, 15-113.2 or 15-113.3 of the Illinois Vehicle Code (truck overweight and permit moves) (625 ILCS 5/15-111, 15-113.1 through 15-113.3), or similar municipal ordinances, may be satisfied without a court appearance by a written plea of guilty and payment of the minimum fine fixed by statute, plus the amount stated in Schedule 10 of the Criminal/Traffic Assessment Act. The clerk of the circuit court shall disburse the amount collected pursuant to statute.

(b) Conservation Offenses. All conservation offenses, except those provided in paragraphs (b), (c), (d), (e), (f) and (g) of Rule 527 may be satisfied without a court appearance by a written plea of guilty, with the exception of electronic pleas unless authorized by the Supreme Court, and payment of the amount stated in Schedule 10 of the Criminal/Traffic Assessment Act. The clerk of the circuit court shall disburse the amount collected pursuant to statute.

(c) Supervision on Written Pleas of Guilty. In counties designated by the Conference of Chief Circuit Judges, the circuit court may by rule or order authorize the entry of an order of supervision under section 5-6-3.1 of the Unified Code of Corrections (730 ILCS 5/5-6-3.1), for traffic offenses satisfied pursuant to paragraph (a) of this Rule 529. Such circuit court rule or order may include but does not require a program by which the accused, upon payment of the amount stated in Schedule 12, agrees to attend and successfully complete a traffic safety program approved by the court under standards set by the Conference. The accused shall be responsible for payment of any traffic safety program fees. If the accused fails to file a certificate of successful completion on or before the termination date of the supervision order, the supervision shall be summarily revoked and conviction entered. Any county designated by the Conference pursuant to this rule may opt-out of this rule upon notification to the Conference by the chief judge of the circuit and rescinding any rule or order entered to establish supervision on written pleas of guilty.

(d) The provisions of Supreme Court Rule 402 relating to pleas of guilty do not apply in cases where a defendant enters a guilty plea under this rule. The clerk of the circuit court shall disburse the monies collected as provided for in Schedule 12 of the Criminal/Traffic Assessment Act.

Redlined Version

Rule 529. Fines, Penalties and Costs on Written Pleas of Guilty in Minor Traffic and Conservation Offenses¶

¶

~~(a)~~ **Traffic Offenses.** ¶

(1) All traffic offenses, except those requiring a court appearance under Rule 551 and those involving offenses set out in Rule 526(b)(1), may be satisfied without a court appearance by a written plea of guilty, with the exception of electronic pleas unless authorized by the Supreme Court, and payment of ~~fines, penalties and costs, equal to the bail required by Rule 526 unless~~ the amount stated in Schedule 12 of the Criminal/Traffic Assessment Act. If an order of failure to appear to answer the charge has been entered pursuant to Rule 556(a), ~~in which case the fine, penalties and costs shall be equal to the amount of the required bail, plus~~ an additional ~~penalty~~ assessment of $35 shall be added. The ~~balance remaining after deducting the amounts required by sections 27.3a and 27.3c~~ clerk of the ~~Clerks of Courts Act (705 ILCS 105/27.3a, 27.3c)~~ circuit court shall ~~be distributed as follows:~~ disburse the amount collected pursuant to statute. ¶

~~(1) 44.5% shall be disbursed to the entity authorized by law to receive the fine imposed in the case;~~ ¶

~~(2) 16.825% shall be disbursed to the State Treasurer; and~~ ¶

~~(3) 38.675% shall be disbursed to the county's general corporate fund~~ ¶

~~No other fines, fees, penalties or costs shall be assessed in any case which is disposed of on a written plea of guilty without a court appearance under paragraph (a) of Rule 529.~~ (2) A charge of violating section 3-401(d), 15-111 or offenses punishable by fine pursuant to sections 15-113.1, 15-113.2 or 15-113.3 of the Illinois Vehicle Code (truck overweight and permit moves) (625 ILCS 5/15-111, 15-113.1 through 15-113.3), or similar municipal ordinances, may be satisfied without a court appearance by a written plea of guilty and payment of the minimum fine fixed by statute, plus ~~all applicable penalties and costs (see Rule 526(b)(1)). Fines, penalties, and costs shall be disbursed by the clerk~~ the amount stated in Schedule 10 of the Criminal/Traffic Assessment Act. The clerk of the circuit court shall disburse the amount collected pursuant to statute. ¶

~~(b)~~ **Conservation Offenses.** ~~Conservation~~ All conservation offenses ~~for which $120 cash bail is required under~~, except those provided in paragraphs (b), (c), (d), (e), (f) and (g) of Rule 527 may be satisfied without a court appearance by a written plea of guilty, with the exception of electronic pleas unless authorized by the Supreme Court, and payment of ~~fines,~~

~~penalties and costs, equal to the cash bail required by Rule 527. The balance remaining after deducting the amounts required by sections 27.3a and 27.3c of the Clerks of Courts Act (705 ILCS 105/27.3a, 27.3c) shall be distributed as follows:~~ the amount stated in Schedule 10 of the Criminal/Traffic Assessment Act. The clerk of the circuit court shall disburse the amount collected pursuant to statute. ¶

~~(1) 67% shall be disbursed to the entity authorized by law to receive the fine imposed in the case;¶~~

~~(2) 16.825% shall be disbursed to the State Treasurer; and¶~~

~~(3) 16.175% shall be disbursed to the county's general corporate fund.¶~~

~~No other fines, fees, penalties or costs shall be assessed in any case which is disposed of on a written plea of guilty without a court appearance under paragraph (b) of this Rule 529.¶~~

~~·····~~**(c) Supervision on Written Pleas of Guilty.** In counties designated by the Conference of Chief Circuit Judges, the circuit court may by rule or order authorize the entry of an order of supervision under section 5-6-3.1 of the Unified Code of Corrections (730 ILCS 5/5-6-3.1), for traffic offenses satisfied pursuant to paragraph (a) of this Rule 529. Such circuit court rule or order may include but does not require a program by which the accused, upon payment of the ~~fines, penalties and costs equal to bail required by Rule 526~~ amount stated in Schedule 12, agrees to attend and successfully complete a traffic safety program approved by the court under standards set by the Conference. The accused shall be responsible for payment of any traffic safety program fees. If the accused fails to file a certificate of successful completion on or before the termination date of the supervision order, the supervision shall be summarily revoked and conviction entered. Any county designated by the Conference pursuant to this rule may opt-out of this rule upon notification to the Conference by the chief judge of the circuit and rescinding any rule or order entered to establish supervision on written pleas of guilty.¶

~~·····~~**(d)** The provisions of Supreme Court Rule 402 relating to pleas of guilty do not apply in cases where a defendant enters a guilty plea under this rule. The clerk of the circuit court shall disburse ~~fines, penalties, and costs~~ the monies collected as provided for in ~~paragraph (a)~~ Schedule 12 of ~~this Rule 529~~ the Criminal/Traffic Assessment Act.¶

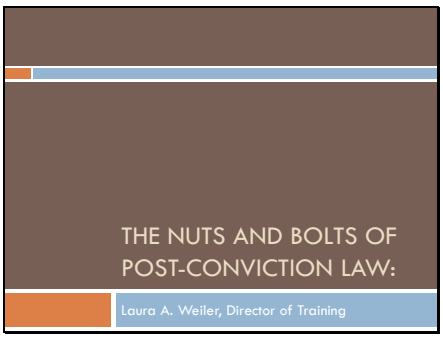
.....Page Break.....¶

Appendix H – Recommended Legislative Checklist

Recommended Checklist for Review of New Assessment Legislation

- Ensure that the new assessment's location in statute is consistent
    - Prior to reform, fees were distributed throughout multiple acts of ILCS. Going forward, they should be located in a single Act.
- Ensure that all modification to assessments advanced in a legislative session have consistent effective dates
    - Clerks have experienced difficulty implementing multiple new fees at different points in a year. Any legislation enacted in a session should have the same effective date.
- Ensure that the new statute clearly describes assessment distribution
    - Statute should clearly lay out the entities and funds that are to receive the assessment and how it is to be collected.
- Ensure that the new statute clearly states the nature of offenses (in criminal schedules) or filings or other activities (in civil cases) applicable to an assessment
- State clearly whether the new assessment impacts the total value of a schedule or whether it modifies distribution of the existing amount

Slide 1



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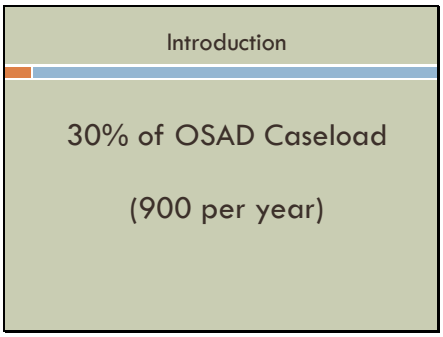

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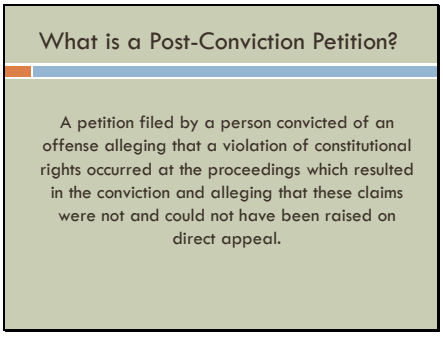

Slide 4

Basics of Appellate Litigation

- Direct Appeal
  - Immediately follows conviction/sentencing
  - Starts "as of right" in the appellate court after client timely files NOA
  - Bound by the contents of the record
    - Common Law Record
    - Report of Proceedings
    - Exhibits

Slide 5

Basics of Appellate Litigation

- Collateral Appeal
  - Generally follows direct appeal
  - Starts in the trial court
  - Can introduce new evidence
  - Issue cannot have been raised on direct appeal

Slide 6

Types of Collateral Appeals

- **Post-Conviction Petition**
  - **725 ILCS 5/122-1 through 5/122-8**
- Petition for Relief from Judgment (PRJ)
  - 2-1401 Petition (735 ILCS 5/2-1401)
- Motion for Forensic Testing
  - 116-3 Motion (725 ILCS 5/116-3)
- Habeas Corpus

Slide 7

Who may file a PC Petition?

"Imprisoned in the Penitentiary"

- Filed petition Monday, released Tuesday
- Appeal Bond
- Mandatory Supervised Release ("MSR")
  - Parole
- Probation

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Who may file a PC Petition?

Not ok:

- Immigration Custody
- Civilly committed as a Sexually Violent Predator (SVP)
- Completed MSR or Probation

Slide 9

Who may file a PC Petition?

No Direct Appeal Necessary

- Pled Guilty
- Chose not to Appeal/Dismissed Appeal

Slide 10

What is the deadline for filing PC petitions?

- 6 months from the conclusion of the direct appeal in the USSCT
- If no cert petition filed, 6 months from when cert would have been due
  - 90 days from last action in state court
- If no direct appeal, 3 years from date of conviction
  - Date of sentencing
- Mailbox Rule applies

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Exceptions to Deadline

- Delay not due to "**culpable negligence**"
- A claim of **actual innocence** based on newly-discovered evidence may be filed at any time
- Claim involves a **void judgment**

Slide 12

What Is Newly-Discovered Evidence of Actual Innocence?

- Evidence was not available at time of trial
- Could not have been discovered sooner through the exercise of due diligence
- Material and non-cumulative
- Is of such a conclusive nature that would probably change the result on retrial

Slide 13

What can you raise in a PC?

Any constitutional violation. Examples:

- IAC – matters outside the record
- Newly-discovered evidence
- IAAC – direct appeal counsel did not raise viable issue
- Prosecution withheld evidence (*Brady* violation)
- Juror went to crime scene
- Involuntary waiver of trial rights

- Also actual innocence

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What CAN'T you raise in a PC?

- Any non-constitutional error (except actual innocence)
  - There was an error in how the court ruled on my 2-1401 petition
- Anything not related to your actual conviction
  - I'm not getting access to the law library

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What CAN'T you raise in a PC?

- Anything that was already raised on direct appeal
  - *Res Judicata*
- Anything that could have been raised on direct appeal (except void judgments)
  - Forfeiture (waiver)

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PC Procedure

Easy as 1-2-3!!

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PC Procedure

- Stage One: Summary Dismissal
- Stage Two: State's Motion to Dismiss
- Stage Three: Evidentiary Hearing

- Note you can appeal court's ruling at any/all stages

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Stage One

- Step One: Defendant files Petition
  - Usually *pro se*
    - No right to have counsel draft for you
    - Typewritten or handwritten
    - Info packets available in merge documents
  - Can be written by counsel if can afford or if counsel does it *pro bono* (clinics, etc.)

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Stage One

- Step Two: Clerk puts it on the court's docket
  - The judge has 90 days from this date to make an initial ruling on the petition
  - The State is NOT allowed to have any input

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Stage One

- Step Three: The judge either "summarily dismisses" the petition or moves it on to Stage Two

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Stage One

- Summary Dismissal: when the court finds the petition is "frivolous and patently without merit"
  - Must be a written order
  - All allegations must be addressed
  - No partial summary dismissals allowed

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Stage One

- Reasons why a petition may be frivolous or patently without merit:
  - Fails to attach support (affidavits, documentation), or an explanation for their absence, as required by statute
  - *Res Judicata*
  - Forfeiture
  - Fails to state the "gist" of a claim

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Stage One

What is the "gist" of a claim??

People v. Hodges, 234 Ill. 2d 1 (2009)

Slide 24

Stage One

- "Arguable basis either in law or in fact."
  - A petition lacking an arguable basis in law or fact is one "based on an indisputably meritless legal theory or a fanciful factual allegation."
  - A claim completely contradicted by the record is an example of an indisputably meritless legal theory
  - Fanciful factual allegations include those that are fantastic or delusional

Slide 25

Stage One

- Inappropriate reasons to summarily dismiss a petition:
  - Timeliness
  - Lack of notarization
  - Legal claim not set out in its entirety (*Dredge, Edwards*)
  - Court does not believe the facts alleged in the petition
    - All alleged facts must be taken as true and liberally construed in favor of the petitioner

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Stage One

- Petitioner can appeal summary dismissal
- Standard of Review is <u>always</u> *de novo* (*Coleman*)
- But court can affirm on any ground – so even if court erred in finding forfeiture, still need to show gist of claim, otherwise appellate court can affirm despite the error

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Stage Two

- Step One: Counsel Appointed
  - Not entitled to the effective assistance of counsel
  - Only entitled to reasonable assistance of counsel

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Stage Two

- Step Two: Counsel fulfills Supreme Court Rule 651(c) obligations

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Stage Two

- Consult with petitioner either by mail or in person to ascertain his contentions
- Read relevant portions of the record
- Make any amendments to the petition that are necessary for an adequate presentation of petitioner's contentions
  - Including claiming lack of "culpable negligence" if petition is untimely
  - Provide any needed affidavits or other documents

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Stage Two

- Can, but doesn't have to, add new claims
  - But if does add claims, needs to adequately present them (*People v. Milam*)
- Does not have to file amended petition – can stand on the defendant's *pro se* petition
- If claims frivolous, can file *Greer* motion

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Stage Two

- Step Three: Lawyer files 651(c) Certificate and any amended petition
- Step Four: State files Motion to Dismiss within 30 days
- Step Five: Petitioner files Answer (optional)

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Stage Two

- Step Six: Court hears arguments from both sides
- Step Seven: Court either grants State's Motion to Dismiss (in whole or in part) or moves case to Stage Three
  - No formal written order required

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Stage Two

- Reasons why the court would grant Motion to Dismiss
  - Any valid Stage-One reason (except "gist" standard)
  - Timeliness
    - But not if Petitioner is not "culpably negligent"
  - Petition fails to make a "substantial showing" of a constitutional violation
    - Again, all facts taken as true and liberally construed in favor of Petitioner

Slide 34

Stage Two

- Petitioner can appeal the dismissal
- Standard of Review is always *de novo*
- Remember, can affirm on any ground
  - But a 651(c) violation requires remand
  - And State can forfeit a procedural requirement

Slide 35

Stage Three

- Step One: Court hears evidence to settle factual disputes in the pleadings
  - Can receive proof via affidavits, depositions, oral testimony, or other evidence
  - Illinois Rules of Evidence do not apply

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Stage Three

- Step Two: Court either grants relief requested, partial relief requested, or denies the petition

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Stage Three

- Petitioner can appeal the court's ruling
- Standard of review is "manifestly erroneous"

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Successive Petitions

- The Act contemplates the filing of only one post-conviction petition
- But there are exceptions:
  - Cause for not raising claim in earlier petition, plus prejudice that will suffer if not allowed to proceed
    - *Pitsonbarger; Smith*, 2014 IL 115946
  - "Colorable" claim of actual innocence based on newly-discovered evidence
    - *Ortiz; Edwards*, 2012 IL 111711

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Successive Petitions

- Can't just file a successive petition – need to file a concurrent motion for leave to file successive petition
  - Petitioner needs to allege more than "gist" of cause/prejudice or actual innocence (*Edwards, Smith*)
  - If petitioner doesn't file a motion for leave to file a successive pc, court can nonetheless grant leave to file *sua sponte*

Slide 40

Successive Petitions

- A prisoner confined in an Illinois Department of Corrections facility can be assessed court costs and fees for the filing of a frivolous post-conviction petition.
  - 735 ILCS 5/22-105
- This is true even if "leave to file" is denied

Slide 41

Final Thoughts – Appellate Concerns

- Can only argue those issues contained in the *pro se* petition (if stage one) or amended petition (if stage two/three)
  - But consider petition liberally

UNFITNESS

This is a basic summary of the law and procedures regarding the representation of people who are unfit for trial. Due process requires that a defendant be mentally capable of understand the nature of the proceedings and assist in his defense. As recent U.S. Supreme Court decisions have shown, a defendant's mental fitness to stand trial or be sentenced has come to the fore when considering the propriety of legal proceedings. In Illinois, the fitness of a defendant to stand trial or plead is governed by 725 ILCS 5/104-10 through 725 ILCS 5/104-31.

Before examining the procedure for handling cases involving unfit defendants, it is necessary to determine what "unfit" means. 725 ILCS 5/104-10 defines an unfit defendant as one who exhibits two characteristics, " because of his mental or physical condition, … is unable to understand the nature and purpose of the proceedings against him or to assist in his defense." This has been refined in the case law as the ability to understand the nature and purpose of the proceedings against him, "… a person's ability to function within the context of trial…" (*People v. Bivins,* 52 Ill. Dec. 835 (1981), at 838). *Bivins* goes on to note that the question is whether the Defendant can function within the legal proceedings rather than within the context of everyday life.

The legal procedures concerning how unfit defendants are handled may be considered a five-stage process. It begins with the raising of a bona fide doubt as to the defendant's fitness to stand trial or plead. The defense, State, or the Court can raise the doubt at any time during the proceedings. It is not necessary that there is a bona fide doubt prior to ordering a fitness evaluation. The purpose of the fitness evaluation is to discover whether or not there is a bona fide doubt as to the defendant's fitness.

I. THE FITNESS EVALUATION

The fitness evaluation is to be conducted is accordance with 725 ILCS 5/104-13 and the report prepared pursuant to 725 ILCS 5/104-15. A sample order directing court services to prepare such a report is attached as exhibit A. The code requires that the examination be done by one or more licensed physicians, clinical psychologists or psychologists other than those employed by the Department of Human Services. The examination is to be done at the place chosen by the evaluator, except that evaluations of people in custody are to be done at a place of the Court's direction. If a defendant does not keep appointments for an evaluation, the Court may order the defendant be admitted to an appropriate facility for up to 7 days (725 ILCS 5/104-13 (c)). "Appropriate facility" is not defined, although the facility cannot be operated by the Department of Human Services. A defendant cannot be remanded on the grounds that an examination has been ordered. (725 ILCS 5/104-13 (d)). The fitness evaluation statute also provides for payment of the expert by the county board.

An important consideration is that a defendant's statements made during the fitness evaluation regarding the crimes charged cannot be used against him, except to the extent that they can be used to rebut a defense of insanity or intoxication. However, when the defendant raises the issue of his mental state as in the ability to understand the *Miranda* warnings, the statements made during the evaluation may be introduced as impeachment. This is not a function of doctor-patient privilege but rather of the Fifth Amendment right against self-incrimination. (See People v. Lowe, 248 N.E. 2d 530 (1969)).

725 ILCS 5/104-15 sets forth the necessary contents of the fitness evaluation. It must contain a diagnosis and an explanation of the diagnosis of the defendant's mental condition as well as a description of how the defendant's mental condition interferes with his ability to understand the nature of the proceedings or assist in his defense. Although the statute sets forth with some specificity what is to be contained in the report, courts have found that strict compliance with the content requirements is not necessary if the court has additional information on the Defendant's mental health (*People v. Williams,* 211 Ill. Dec 441 (1995)); courts only rejected a report when it was conclusory and did not provide an explanation of the diagnosis or a statement of the facts on which the diagnosis was raised. (*People v. Harris,* 69 Ill. Dec. 506 (1983)). The evaluation is to be prepared within 30 days of being ordered. Finally, if the evaluation indicates that the Defendant is unfit, the report shall contain an opinion as to the likelihood that the Defendant will attain fitness within one year.

II. The Fitness Hearing

Once the fitness evaluation has been prepared, a hearing can take place pursuant to 725 ILCS 5/104-16. The defendant or the State may request a jury or the judge may on his own motion order a jury. The right to jury determination of competency is not a constitutional right. (People v. Shadowens, 44 Ill.2d 70, 254 N.E.2d 484; People v. White, 131 Ill.App.2d 652, 264 N.E.2d 228.) Thus, a jury waiver is unnecessary, but a demand required if the defendant desires a jury. In the alternative, the court may order a jury. The hearing is to take place within 45 days of the completion of the fitness evaluation. The statute sets forth issues that are admissible including the defendant's understanding of the legal process; ability to recall and communicate with counsel; social behavior and abilities. The defendant has a right to attend the hearing and his presence can be waived only if he physically cannot be there as certified by a licensed physician. The finder of fact, whether judge or jury, must then decide two issues: first, whether the defendant is unfit, and if so, whether there is a reasonable probability the defendant will achieve fitness within one year. If the defendant is found fit, then the case follows the same procedure as for any other fit defendant. If the defendant is found unfit and the finder of fact determines that there is not a reasonable probability he will attain fitness within one year, the Court shall proceed according to 725 ILCS 5/104-23, discussed *infra*. If the defendant is found unfit and the finder of fact determines that there is a reasonable probability that he will attain fitness within one year or that the finder of fact cannot determine whether there is a reasonable probability that the defendant will attain fitness within one year, the Court shall order that the defendant shall undergo treatment to render him fit.

III. Commitment for Treatment- Progress Reports

Once the defendant has been found unfit for reasons of mental disability, the court may remand him to DHS or place him in the custody of any appropriate public or private treatment program. If the defendant is placed with DHS, he will be held in a secure setting unless there are compelling reasons not to. It is important to note that the court is not required to remand the defendant to DHS, nor must the placement be inpatient. These matters rest with the sound discretion of the court. The treatment facility must provide a written report to the court, state and defense within 30 days of the treatment order. This report shall contain an assessment of the treatment facility's ability to provide treatment to the defendant and a statement of whether there is a substantial probability the defendant will attain fitness within one year. If the report states that there

is a substantial probability that the defendant will attain fitness, the report shall also include a diagnosis, a treatment plan with timetable and an identification of the defendant's treatment supervisor. 725 ILCS 5/104-18 provides for progress reports to be prepared whenever the treatment provider believes that the defendant has achieved fitness or that there is not a substantial probability the defendant will achieve fitness within one year. 725 ILCS 5/104-20 requires that there is a hearing date every 90 days to re-examine the defendant's fitness. The issues at that hearing remain nearly the same: whether the defendant is fit to stand trial or plead and whether the defendant is making progress towards achieving fitness within one year from the original finding of unfitness. This hearing takes place before the court only without a right to jury trial. A status report pursuant to 725 ILCS 5/104-18 shall be delivered to the court seven days before the 90 day hearing and shall contain three items: clinical findings and their basis; treatment provider's opinion as to whether the defendant is making progress towards achieving fitness; and a statement of the defendant's medication, if any.

At this hearing, the court determines whether the defendant is fit or remains unfit to stand trial. If the court finds the defendant to be fit, the court shall set the matter for trial. If the court finds that the defendant remains unfit but is making progress towards achieving fitness, the court may continue the treatment program previously ordered. Finally, the court may find that the there is not a substantial probability that the defendant will achieve fitness within one year in which case the court shall set the case for a discharge hearing. It should be noted that the defendant may waive this hearing, although the burden of showing that the defendant has attained fitness remains on the state who must prove fitness by a preponderance of the evidence.

IV. Discharge Hearing

The discharge hearing takes place when either a year has passed since the original finding of unfitness or the court determines that there is not a reasonable probability that the defendant will attain fitness within a year. The defendant's attorney may file a motion for a discharge hearing that must take place within 120 days of the motion filing.
The discharge hearing is a test of the strength of the evidence against the defendant. It is essentially a bench trial with some slight modifications to the rules of evidence pursuant to 725 ILCS 5/104(a), which permit the introduction of certain kinds of hearsay and testimony by affidavit. At the conclusion of the discharge hearing, the court can make one of three findings.

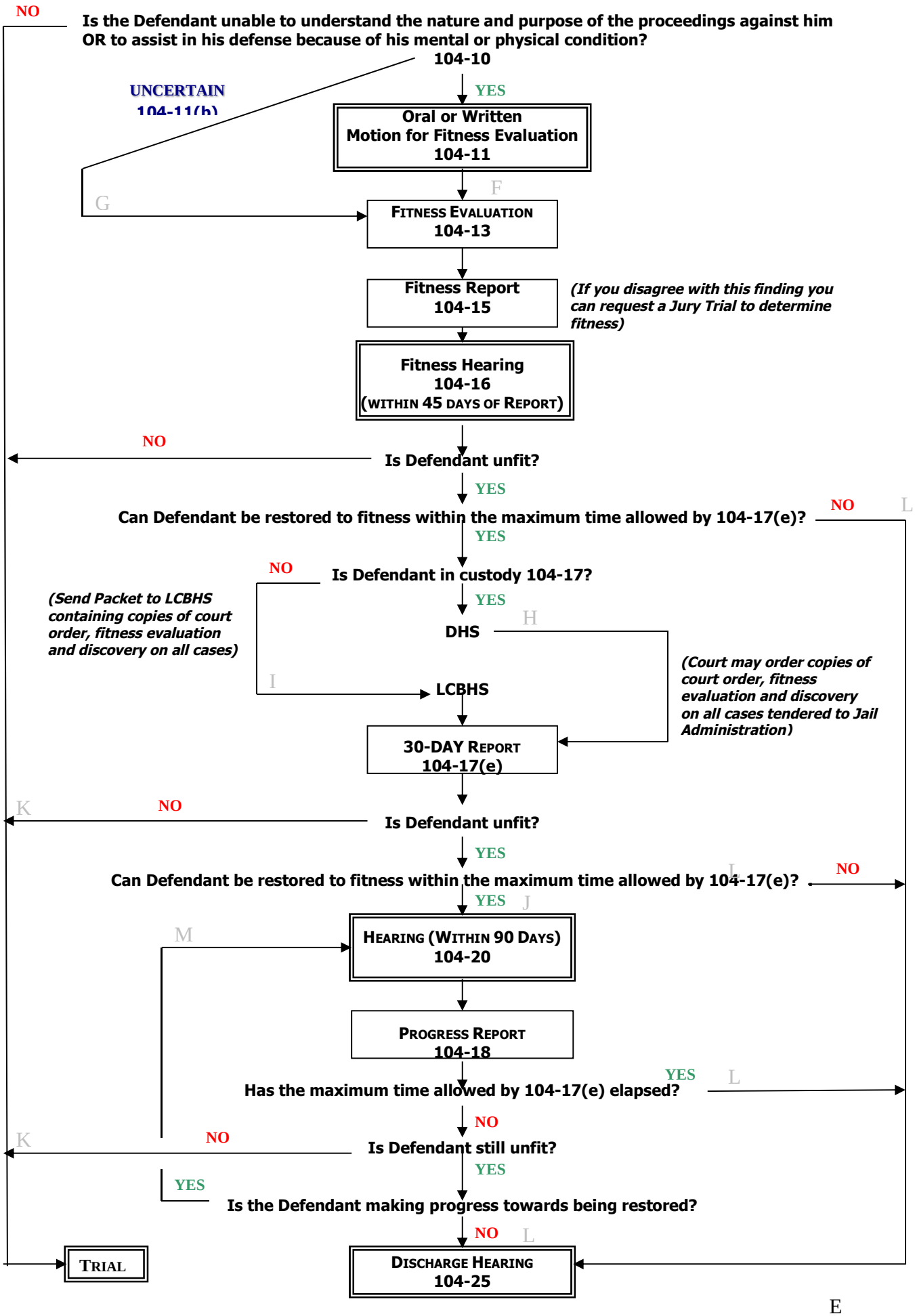
1. If the evidence does not prove the defendant guilty beyond a reasonable doubt, the court shall enter a judgment of acquittal. At that time, the defendant is released although the defendant may be subject to commitment (involuntary admission) under the Mental Health and Developmental Disabilities Code.
2. If the defendant is found not guilty by reason of insanity, the Court shall enter a judgment of acquittal and the case shall proceed as any other finding of not guilty by reason of insanity.
3. If the defendant is not acquitted of the charge and not found not guilty by reason of insanity, the Defendant may be remanded to DHS for an additional treatment period up to 15 months on class 2,3,4 felonies, up to 2 years for class X and 1 felonies, and up to 5 years for first degree murder. It is unclear whether there is an extended treatment period for misdemeanors.

V. Extended Treatment

A practical result of the code is that a defendant may not be subject to the extended treatment period unless he has had a discharge hearing. A finding of non-acquittal may be appealed in the same way as a guilty verdict in a criminal case. Since there is no chance that the defendant could be convicted of the offense charged, jeopardy does not attach at a discharge hearing. When the extended treatment period expires, the court must make an additional determination. If the defendant has become fit by the expiration of the extended treatment period, he may be tried as any fit defendant, with the addition that witness testimony from the discharge hearing may be introduced at the defendant's trial if that witness is legally unavailable at the time of the subsequent trial. If the defendant remains unfit, the court may decide that he is subject to commitment under the MHDDC or presents a serious threat to public safety, he shall be remanded to DHS for treatment as if he were civilly committed. A treatment plan must be prepared and 90-day status reports must be filed with the court and the State or the defendant may ask the court with jurisdiction to review the treatment plan, as part of which the court may order an independent evaluation of the defendant up to once per year. The final commitment to DHS for treatment may only last as long as the maximum penalty to which the defendant would have been subject had he been convicted in a criminal proceeding.

Much of the rest of 5/104 deals with its applicability to defendants found unfit prior to its enactment, disposition of defendants found unfit before the enactment of the article, and a conflict of law provision. The section ends with a requirement that before an unfit Defendant is released from DHS, the Sheriff for the committing county be given written notice of the release (725 ILCS 5/104-30) and that a committed Defendant taken outside of a DHS secure setting be accompanied by DHS personnel (725 ILCS 5/104-31).

Although 5/104 is written in convoluted style, the basic issues repeat themselves throughout the process: Is the defendant fit to stand trial and is there a substantial probability that the defendant will attain fitness with one year.


NO
Is the Defendant unable to understand the nature and purpose of the proceedings against him OR to assist in his defense because of his mental or physical condition?
104-10
UNCERTAIN
104-11(b)
YES
Oral or Written Motion for Fitness Evaluation 104-11
F
G
FITNESS EVALUATION 104-13
Fitness Report 104-15
(If you disagree with this finding you can request a Jury Trial to determine fitness)
Fitness Hearing 104-16 (WITHIN 45 DAYS OF REPORT)
NO
Is Defendant unfit?
YES
Can Defendant be restored to fitness within the maximum time allowed by 104-17(e)?
NO
L
YES
NO
Is Defendant in custody 104-17?
YES
(Send Packet to LCBHS containing copies of court order, fitness evaluation and discovery on all cases)
DHS
H
(Court may order copies of court order, fitness evaluation and discovery on all cases tendered to Jail Administration)
I
LCBHS
30-DAY REPORT 104-17(e)
K
NO
Is Defendant unfit?
YES
Can Defendant be restored to fitness within the maximum time allowed by 104-17(e)?
L
NO
YES
J
M
HEARING (WITHIN 90 DAYS) 104-20
PROGRESS REPORT 104-18
Has the maximum time allowed by 104-17(e) elapsed?
YES
L
NO
K
NO
Is Defendant still unfit?
YES
YES
Is the Defendant making progress towards being restored?
NO
L
TRIAL
DISCHARGE HEARING 104-25
E

F

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
-vs-	)	GEN. NO.
	)	
	)	

ORDER

This matter coming before the Court on Defendant's Motion pursuant to 725 ILCS 104-11 raising the issue of the Defendant fitness,

The Court finds there is a bona fide doubt as to the Defendant's fitness to stand trial, therefore;

IT IS HEREBY ORDERED THAT: Dr. Dunne or Dr. Chantry shall conduct a mental health evaluation pursuant to 725 ILCS 5/104-13 for the purpose of determining the Defendant's fitness to stand trial.

If necessary, the Lake County Jail shall grant Dr. Dunne or Dr. Chantry a contact visit with the above named Defendant in order to complete said evaluation.

It is further ordered that the mental health evaluation shall be delivered to C- by at 9:00 A.M. or as soon thereafter as possible.

ENTER:

_____
JUDGE

Dated at Waukegan, Illinois this
day of , 20 .

ORDER PREPARED BY:

, Assistant Public Defender
OFFICE OF THE LAKE COUNTY PUBLIC DEFENDER
15 South County Street
Waukegan, Illinois 60085-5503
(847) 377-3360

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
-vs-	)	GEN. NO.
	)	
	)	

ORDER

This matter coming before the Court on Defendant's Motion pursuant to 725 ILCS 104-11 raising the issue of the Defendant fitness,

The Court making no finding at this time as to the Defendant's fitness to stand trial, therefore;

IT IS HEREBY ORDERED THAT: Dr. Dunne or Dr. Chantry shall conduct a mental health evaluation pursuant to 725 ILCS 5/104-13 for the purpose of determining the Defendant's fitness to stand trial.

If necessary, the Lake County Jail shall grant Dr. Dunne or Dr. Chantry a contact visit with the above named Defendant in order to complete said evaluation.

It is further ordered that the mental health evaluation shall be delivered to C- by at 9:00 A.M. or as soon thereafter as possible.

ENTER:

_____
JUDGE

Dated at Waukegan, Illinois this
day of , 20 .

ORDER PREPARED BY:

, Assistant Public Defender
OFFICE OF THE LAKE COUNTY PUBLIC DEFENDER
15 South County Street
Waukegan, Illinois 60085-5503
(847) 377-3360

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
-vs-	)	GEN. NO.
	)	
	)	

ORDER

Pursuant to a petition filed under 725 ILCS 5/104-11 challenging the fitness of the above named Defendant to plead or stand trial, this matter coming on for hearing pursuant to 725 ILCS 5/104-16, the Court having heard the evidence and arguments of Counsel,

THE COURT FINDS the above named Defendant is not fit to plead or stand trial and further finds there is a substantial probability that the Defendant, if provided with a course of treatment, will attain fitness within one year, therefore,

IT IS HEREBY ORDERED THAT:

1. Pursuant to 725 ILCS 5/104-17(b), the Defendant shall be placed in the custody of the Department of Human Services, which shall determine the appropriate placement and provide appropriate treatment for the Defendant;
2. Within 30 days of the entry of this order, the person supervising the Defendant's treatment shall file with the court, the State, and the defense a report pursuant to 725 ILCS 5/104-17(e) . Said report shall contain:
   a. An assessment of the facility's or program's capacity to provide appropriate treatment for the Defendant; and
   b. Their opinion as to the probability of the Defendant's attaining fitness within a period of one year from the date of the finding of unfitness.
3. If the report indicates that there is a substantial probability that the Defendant will attain fitness within the time period, the treatment supervisor shall also file a treatment plan which shall include:
   a. A diagnosis of the Defendant's disability;
   b. A description of treatment goals with respect to rendering the Defendant fit, a specification of the proposed treatment modalities, and an estimated timetable for attainment of the goals;
   c. An identification of the person in charge of supervising the Defendant's treatment.
4. This matter shall be set for hearing to reexamine the issue of the Defendant's fitness on _____, 20___ in C-_____ at _____ __.M. *(within 90 days)*
5. Pursuant to 725 ILCS 5/104-18, the person supervising the Defendant's treatment shall file a written progress report to the court, the State, and the defense:
   a. At least 7 days prior to the date for any hearing on the issue of the Defendant's fitness;
   b. Whenever he believes that the Defendant has attained fitness;
   c. Whenever he believes that there is not a substantial probability that the Defendant will attain fitness, with treatment, within one year from the date of the original finding of unfitness.
6. The progress report shall contain:
   a. The clinical findings of the treatment supervisor and the facts upon which the findings are based;
   b. The opinion of the treatment supervisor as to whether the Defendant has attained fitness or as to whether the Defendant is making progress, under treatment, toward attaining fitness within one year from the date of the original finding of unfitness;
   c. If the Defendant is receiving medication, information from the prescribing physician indicating the type, the dosage and the effect of the medication on the Defendant's appearance, actions and demeanor.

ENTER:

_____
JUDGE

Dated at Waukegan, Illinois
this _____ day of _____, 20_____.

ORDER PREPARED BY:

_____, Assistant Public Defender
15 S. County Street
Waukegan, Illinois 60085
(847) 377-3360

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
-vs-	)	GEN. NO.
	)	
	)	

ORDER

Pursuant to a petition filed under 725 ILCS 5/104-11 challenging the fitness of the above named Defendant to plead or stand trial, this matter coming on for hearing pursuant to 725 ILCS 5/104-16, the Court having heard the evidence and arguments of Counsel,

THE COURT FINDS the above named Defendant is not fit to plead or stand trial and further finds there is a substantial probability that the defendant, if provided with a course of treatment, will attain fitness within one year, therefore,

IT IS HEREBY ORDERED THAT:

7. Pursuant to 725 ILCS 5/104-17(a), the Defendant shall report to Lake County Behavioral Health Services within seven (7) days and thereafter follow all recommendations for treatment. Lake County Behavioral Health Services shall determine and provide the appropriate treatment for the defendant;
8. Within 30 days of the entry of this order, the person supervising the Defendant's treatment shall file with the court, the State, and the defense a report pursuant to 725 ILCS 5/104-17(e) . Said report shall contain:
   a. An assessment of the facility's or program's capacity to provide appropriate treatment for the Defendant; and
   b. Their opinion as to the probability of the Defendant's attaining fitness within a period of one year from the date of the finding of unfitness.
9. If the report indicates that there is a substantial probability that the defendant will attain fitness within the time period, the treatment supervisor shall also file a treatment plan which shall include:
   a. A diagnosis of the Defendant's disability;
   b. A description of treatment goals with respect to rendering the Defendant fit, a specification of the proposed treatment modalities, and an estimated timetable for attainment of the goals;
   c. An identification of the person in charge of supervising the Defendant's treatment.
10. This matter shall be set for hearing to reexamine the issue of the Defendant's fitness on _____, 20___ in C-_____ at _____ __.M. *(within 90 days)*
11. Pursuant to 725 ILCS 5/104-18, the person supervising the Defendant's treatment shall file a written progress report to the court, the State, and the defense:
   a. At least 7 days prior to the date for any hearing on the issue of the Defendant's fitness;
   b. Whenever he believes that the Defendant has attained fitness;
   c. Whenever he believes that there is not a substantial probability that the Defendant will attain fitness, with treatment, within one year from the date of the original finding of unfitness.
12. The progress report shall contain:
   a. The clinical findings of the treatment supervisor and the facts upon which the findings are based;
   b. The opinion of the treatment supervisor as to whether the Defendant has attained fitness or as to whether the Defendant is making progress, under treatment, toward attaining fitness within one year from the date of the original finding of unfitness;
   c. If the Defendant is receiving medication, information from the prescribing physician indicating the type, the dosage and the effect of the medication on the Defendant's appearance, actions and demeanor.

ENTER:

_____
JUDGE

Dated at Waukegan, Illinois
this _____ day of _____, 20_____.

ORDER PREPARED BY:

_____, Assistant Public Defender
15 S. County Street
Waukegan, Illinois 60085
(847) 377-3360

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
)
-vs-) GEN. NO.
)
)

ORDER

Pursuant to a previous finding that the Defendant is unfit to plead or stand trial, this matter coming on for hearing,

IT IS HEREBY ORDERED THAT:

1. This matter shall be set for hearing to reexamine the issue of the Defendant's fitness on _____, 20___ in C-_____ at _____ __.M. *(within 90 days)*
2. Pursuant to 725 ILCS 5/104-18, the person supervising the Defendant's treatment shall file a written progress report to the court, the State, and the defense:
   a. At least 7 days prior to the date for any hearing on the issue of the Defendant's fitness;
   b. Whenever he believes that the Defendant has attained fitness;
   c. Whenever he believes that there is not a substantial probability that the Defendant will attain fitness, with treatment, within one year from the date of the original finding of unfitness.
3. The progress report shall contain:
   a. The clinical findings of the treatment supervisor and the facts upon which the findings are based;
   b. The opinion of the treatment supervisor as to whether the Defendant has attained fitness or as to whether the Defendant is making progress, under treatment, toward attaining fitness within one year from the date of the original finding of unfitness;
   c. If the Defendant is receiving medication, information from the prescribing physician indicating the type, the dosage and the effect of the medication on the Defendant's appearance, actions and demeanor.

ENTER:

_____
JUDGE

Dated at Waukegan, Illinois
this _____ day of _____, 20_____.

ORDER PREPARED BY:

_____, Assistant Public Defender
15 S. County Street
Waukegan, Illinois 60085
(847) 377-3360

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
-vs-	)	GEN. NO.
	)	
	)	

ORDER

This matter coming on for hearing pursuant to 725 ILCS 5/104-20, the Court having heard the evidence and arguments of Counsel,

THE COURT FINDS the above named Defendant is fit to plead or stand trial, therefore,

IT IS HEREBY ORDERED THAT: this matter shall be set for trial in C-_____ on _____, 20___ at ____ __.M.

ENTER:

_____
JUDGE

Dated at Waukegan, Illinois
this _____ day of _____, 20_____.

ORDER PREPARED BY:
_____, Assistant Public Defender
15 S. County Street
Waukegan, Illinois 60085
(847) 377-3360

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
-vs-	)	GEN. NO.
	)	
	)	

ORDER

This matter coming on for hearing pursuant to 725 ILCS 5/104-20, the Court having heard the evidence and arguments of Counsel,

THE COURT FINDS the above named Defendant remains unfit to plead or stand trial and that the Defendant is not making progress toward attaining fitness such that there is not a substantial probability that he will attain fitness within one year from the date of the original finding of unfitness, therefore,

IT IS HEREBY ORDERED THAT, pursuant to Defendant's Motion under 725 ILCS 104-23(a), this matter shall be set for discharge hearing pursuant to 725 ILCS 104-25 on _____, 20___ in C-_____ at _____ __.M.

ENTER:

_____
JUDGE

Dated at Waukegan, Illinois
this _____ day of _____, 20_____.

ORDER PREPARED BY:
_____, Assistant Public Defender
15 S. County Street
Waukegan, Illinois 60085
(847) 377-3360

M

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

IN THE CIRCUIT COURT OF THE NINETEENTH
JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
)
-vs-) GEN. NO.
)
)

ORDER

This matter coming on for hearing pursuant to 725 ILCS 5/104-20, the Court having heard the evidence and arguments of Counsel,

THE COURT FINDS the above named Defendant remains unfit to plead or stand trial but that the Defendant is making progress toward attaining fitness, therefore,

IT IS HEREBY ORDERED THAT:

4. This matter shall be set for hearing to reexamine the issue of the Defendant's fitness on _____, 20___ in C-_____ at _____ __.M. *(within 90 days)*
5. Pursuant to 725 ILCS 5/104-18, the person supervising the Defendant's treatment shall file a written progress report to the court, the State, and the defense:
   a. At least 7 days prior to the date for any hearing on the issue of the Defendant's fitness;
   b. Whenever he believes that the Defendant has attained fitness;
   c. Whenever he believes that there is not a substantial probability that the Defendant will attain fitness, with treatment, within one year from the date of the original finding of unfitness.
6. The progress report shall contain:
   a. The clinical findings of the treatment supervisor and the facts upon which the findings are based;
   b. The opinion of the treatment supervisor as to whether the Defendant has attained fitness or as to whether the Defendant is making progress, under treatment, toward attaining fitness within one year from the date of the original finding of unfitness;
   c. If the Defendant is receiving medication, information from the prescribing physician indicating the type, the dosage and the effect of the medication on the Defendant's appearance, actions and demeanor.

ENTER:

_____
JUDGE

Dated at Waukegan, Illinois
this _____ day of _____, 20_____.

ORDER PREPARED BY:

_____, Assistant Public Defender

15 S. County Street
Waukegan, Illinois 60085
(847) 377-3360

N

THUMBNAIL GUIDE TO PRESERVATION

GENERAL RULE TO PRESERVE:	To preserve issue, party must **(1) object before/at trial AND (2) include issue in a detailed post-trial motion.** *People v. Enoch*, 122 Ill.2d 176 (1998).
WHAT TO FILE BEFORE TRIAL:	Motions: to suppress confession, to quash arrest/suppress evidence, to dismiss charges, for discovery, for SOJ, *in limine*, etc.
ON GRANT OF STATE'S MOTION:	To preserve issue, file a **written response** and include specific error in motion for new trial.
OBJECTIONS:	Must (1) be contemporaneous (as soon as basis becomes apparent), and (2) specify ALL applicable grounds for exclusion of evidence.

> Objection to composition of jury must be made **before jury is sworn in**.

SECURE COURT'S RULING:	Do what you can to **ensure that judge issues a ruling** on your objections on the record. Failure to secure ruling from trial court triggers forfeiture of issue on appeal. *People v. Caballero*, 102 Ill.2d 23 (1984).
OFFERS OF PROOF:	If court bars your evidence, make a **detailed** offer of proof by (1) calling witness to the stand (*preferred*) or (2) summarizing testimony (*disfavored*).

> Judge's refusal to permit offer of proof on relevant evidence is error.

WHAT IF ISSUE IS JUDGE'S OWN CONDUCT??	Try (within reason) to get judge to put his/her absurdity/obstinance on the record. If judge prevents you from objecting/makes objection futile, client can try *Sprinkle* doctrine on appeal (but don't count on it…).
ENSURING A CLEAR RECORD:	Appellant (your client, eventually!) bears responsibility to provide complete record on appeal, and any doubts will be resolved against appellant.

> **Clarify record** re: distances, movements, race of excluded jurors, length of

ASKING FOR JURY INSTRUCTION:	(1) Offer instruction, (2) argue for inclusion, (3) secure ruling, (4) tender sought-after instruction and incorporate into record, and (5) include in post-trial motion.
MOTION FOR NEW TRIAL:	A **written motion**, filed w/in 30 days of verdict, must include **any and all claims of error** that you would like preserved.
	MFNT must set forth errors **<u>with specificity</u>**; generic invocations are insufficient, and only give you the sensation of doing a good job while producing the opposite result.
	The boilerplate motion is a **template**, not a finished product.
SENTENCING ISSUES:	Make a contemporaneous objection/offer of proof at sentencing hearing, and include issue in a **written post-sentencing motion.**